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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DR. MARKCUS KITCHENS, JR., : CIVIL CASE NUMBER
PLAINTIFF :
 :
VERSUS : 22-3301
 :
UNITED STATES MEDICAL :
LICENSING EXAMINATION, :
DEFENDANTS :

MAY 17, 2023
VIA MICROSOFT TEAMS
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE JOHN F. MURPHY, J.

BENCH TRIAL - DAY 3

APPEARANCES:

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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
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COUNSEL FOR THE DEFENDANT

1 (CLERK OPENS COURT.)

2 THE COURT: LOOKS LIKE I SEE MS. MEW AND
3 DR. KITCHENS. LET'S SEE DO WE HAVE ANY BUSINESS TO
4 ATTEND TO BEFORE WE RESUME TESTIMONY?

5 MS. MEW: I DON'T THINK SO. I DIDN'T
6 KNOW IF WE WANTED TO TALK SCHEDULE NOW OR WAIT TO SEE
7 HOW THE DAY GOES.

8 THE COURT: WELL, WHY DON'T YOU TELL US
9 WHAT YOU HAVE IN MIND?

10 MS. MEW: WELL, JUST IN TERMS OF OUR
11 WITNESSES, WE HAVE ONE WITNESS, MICHAEL GORDON, WHO I
12 WOULD LIKE TO GET ON TODAY BECAUSE HE IS NOT AVAILABLE
13 TOMORROW. HE IS ALSO NOT AVAILABLE TODAY UNTIL 11:00,
14 SO DEPENDING ON HOW THE TIMING GOES THIS MORNING WE
15 MIGHT BE ABLE TO GET AT LEAST ONE OF NBME'S WITNESSES ON
16 BEFORE HIM, BUT THAT WAS, I THINK, THE BIGGEST ISSUE AND
17 CAN SORT OF SEE HOW EVERYTHING ELSE PLAYS OUT.

18 THE COURT: OKAY. WHAT ARE YOU THINKING
19 -- I HEARD THE WORD TOMORROW. WHAT ARE YOU -- WHAT
20 WOULD YOU ESTIMATE, IN ADDITION TO TODAY, HOW MUCH MORE
21 DO THINK YOU NEED?

22 MS. MEW: WELL, WE HAVE FIVE WITNESSES,
23 YOUR HONOR. I AM TRYING TO STREAMLINE. I DON'T KNOW IF
24 WE CAN GET EVERYONE ON TODAY, AND A LOT OF IT OF COURSE
25 DEPENDS ON HOW LONG THE CROSS EXAMINATION IS.

1 SO -- EXCUSE ME -- SEEING WHERE WE ARE ON
2 THE SCHEDULE I WAS TRYING TO CHECK WITH PEOPLE AT LEAST
3 TO SEE IF THEY WOULD BE AVAILABLE TOMORROW IF THERE WAS
4 SOME CARRY OVER.

5 THE COURT: OKAY.

6 DR. KITCHENS: AND THEN IN TERMS OF -- I
7 GUESS SINCE WE'RE TALKING ABOUT TOMORROW, IN TERMS OF
8 CLOSING ARGUMENTS, I'M ASSUMING WE WON'T BE DOING ANY
9 CLOSING ARGUMENTS TODAY, AND I WAS ALSO WONDERING IF IT
10 WOULD MAKE SENSE, AND IF IT WOULD WORK WITH THE JUDGE --
11 WITH YOUR SCHEDULE, YOUR HONOR, TO EVEN MAYBE PUSH THOSE
12 TO FRIDAY, JUST TO GIVE A LITTLE MORE TIME TO PULL THAT
13 TOGETHER. JUST A THOUGHT.

14 MS. MEW: AND, YOUR HONOR, JUST FOR --
15 YOUR CAMERA IS NOT ON. IT MIGHT HAVE BEEN INTENDED, BUT
16 I JUST WANTED TO LET YOU KNOW THAT, OR AT LEAST I CANNOT
17 SEE YOU RIGHT NOW.

18 DR. KITCHENS: I CAN SEE YOUR HONOR.

19 MS. MEW: OH. OKAY. NOW I CAN SEE YOU.

20 DR. KITCHENS: JUST THE TECHNOLOGY.

21 MS. MEW: IT IS THE TECHNOLOGY BECAUSE
22 NOW I CAN'T SEE YOU, DR. KITCHENS.

23 DR. KITCHENS: WOW, AND I SEE EVERYONE.

24 THE COURT: YEA, SO SOMETIMES WHEN THAT
25 HAPPENS I FIND IF I JUST TURN MY CAMERA OFF AND ON AGAIN

1 IT SEEMS TO FIX IT. I DON'T KNOW, IT'S -- IT COMES AND
2 GOES.

3 SO -- ALL RIGHT. THAT'S OKAY. I THINK
4 WHAT I WILL DO THEN IS MAYBE AT OUR FIRST BREAK TODAY OR
5 AT LUNCH TIME I WILL HUDDLE UP WITH MY TEAM HERE AND
6 FIGURE OUT THE -- BECAUSE I CAN'T GIVE YOU 100 PERCENT
7 OF MY TIME IN THE THE NEXT TWO DAYS, BUT I HAVE WINDOWS
8 SO I CAN GIVE YOU THE WINDOWS OF TIME WE CAN GET THINGS
9 FINISHED TOMORROW AND FRIDAY; OKAY?

10 MS. MEW: OKAY.

11 DR. KITCHENS: AND JUDGE, IF WE HAD TO
12 PREFERENCE BETWEEN THE TWO, BETWEEN THURSDAY AND FRIDAY,
13 THURSDAY WOULD BE MORE BENEFICIAL FOR ME.

14 THE COURT: WELL, I AM ALL IN FAVOR OF
15 CONTINUING TO MAKE PROGRESS SO WHAT I'M SURE THAT I WILL
16 DO IS GIVE YOU ALL THE TIME I CAN ON THURSDAY, AND IF --
17 AS FOR CLOSING ARGUMENTS, I DON'T -- BECAUSE YOU ARE NOT
18 -- I AM NOT GOING TO BE RULING FROM THE BENCH, YOU DON'T
19 NEED TO TRY TO JAM EVERYTHING IN MY HEAD FOR SOME KIND
20 OF LIKE GRAND FINALE.

21 SO WE COULD -- I WILL THINK ABOUT IT A
22 LITTLE BIT, BUT WE COULD DO CLOSING ARGUMENTS. IT DOES
23 NOT HAVE TO TO BE RIGHT AT THE END HERE. ANOTHER
24 POSSIBILITY IS I HAD NOT THOUGHT ABOUT THIS BUT ANOTHER
25 POSSIBILITY IF WE DO POST TRIAL BRIEFING I COULD HAVE

1 YOU BACK ON FOR ARGUMENT AFTER THE BRIEFING COMES IN, IS
2 ANOTHER POSSIBILITY BUT LET ME THINK ABOUT THAT; OKAY?

3 MS. MEW: THANK YOU, YOUR HONOR.

4 THE COURT: ALL RIGHT. ANY OTHER
5 BUSINESS?

6 DR. KITCHENS: NO, YOUR HONOR.

7 THE COURT: OKAY. SO I BELIEVE WE WERE
8 DOING CROSS EXAMINATION OF DR. KITCHENS. SO.

9 MS. MEW: I'M SORRY, JUST BEFORE -- DR.
10 KITCHENS, COULD YOU TRY TURNING YOUR CAMERA ON AND OFF,
11 BECAUSE NOW I AM SEEING THE JUDGE BUT NOT YOU. I TRIED
12 TURNING MINE ON AND OFF, I AM NOT SURE IF IT IS ON MY
13 END.

14 DR. KITCHENS: OKAY. LET ME TRY. STILL
15 CAN'T SEE ME?

16 MS. MEW: NO.

17 DR. KITCHENS: HOW ABOUT NOW?

18 MS. MEW: NOW I CAN. LOOKS LIKE I HAVE A
19 CHOICE BETWEEN YOU OR YOUR HONOR, SO -- THAT'S FINE.

20 ACTUALLY, YOU KNOW WHAT IF --

21 THE COURT: MUCH MORE IMPORTANT FOR DR.
22 KITCHENS TO BE ON CAMERA, SO THAT'S FINE.

23 MS. MEW: OKAY.

24 THE COURT: ALL RIGHT. SO WE WILL RESUME
25 CROSS EXAMINATION OF DR. KITCHENS.

1 MS. MEW, THE FLOOR IS YOURS AND, DR.

2 KITCHENS, JUST A REMINDER, YOU ARE STILL UNDER OATH.

3 DR. KITCHENS: UNDERSTOOD, YOUR HONOR.

4 MS. MEW: THANK YOU, YOUR HONOR.

5 CROSS EXAMINATION (RESUMED.)

6 BY MS. MEW:

7 Q. GOOD MORNING, DR. KITCHENS.

8 A. GOOD MORNING, MS. MEW.

9 Q. WE E-MAILED LAST NIGHT ABOUT SORT OF THE PENDING
10 EXHIBIT ISSUES, AND I JUST WANTED TO ADMIT TWO EXHIBITS
11 INTO EVIDENCE.

12 MS. MEW: DEFENDANTS MOVE TO ADMIT
13 EXHIBIT DX 28 INTO EVIDENCE?

14 DR. KITCHENS: NO OBJECTION, YOUR HONOR.

15 THE COURT: ADMITTED.

16 (DEFENSE EXHIBIT 28 IS ADMITTED INTO
17 EVIDENCE.)

18 MS. MEW: AND DEFENDANT MOVES TO ADMIT DX
19 35 INTO EVIDENCE?

20 DR. KITCHENS: NO OBJECTION.

21 THE COURT: ADMITTED.

22 (DEFENSE EXHIBIT 35 IS ADMITTED INTO
23 EVIDENCE.)

24 MS. MEW: AND WE HAVE NO FURTHER
25 QUESTIONS.

1 THE COURT: ALL RIGHT THEN.

2 SO NOW, DR. KITCHENS, IS YOUR OPPORTUNITY
3 FOR REDIRECT. JUST AS A REMINDER, THE REDIRECT SHOULD
4 BE LIMITED TO THE TOPICS OF CROSS EXAMINATION, WHATEVER
5 IT IS THAT MS. MEW BROUGHT UP, AND JUST FOR MY OWN
6 BENEFIT, DON'T FEEL LIKE YOU NEED TO REPEAT YOURSELF IF
7 IT IS SOMETHING YOU'VE ALREADY SAID. NOT ONLY IS IT IN
8 THE RECORD, BUT I ALSO HEARD IT. SO WITH THAT, GO
9 AHEAD.

10 DR. KITCHENS: ALL RIGHT, THANK YOU, YOUR
11 HONOR.

12 REDIRECT EXAMINATION

13 DR. KITCHENS: LET'S SEE HERE.

14 IF WE COULD PULL UP, PLEASE, JX 4, WHICH IS -- EXHIBIT
15 JX 4, WHICH IS THE -- SORRY. I'M SORRY. I DON'T THINK
16 WE WERE PREPARED TO GO RIGHT TO IT, SO WE WILL WAIT FOR
17 MY WIFE TO GET THE EXHIBIT PULLED UP THERE. WHICH
18 EXHIBIT IS THAT ONE?

19 SORRY, THIS IS JX -- EXHIBIT JX 1. JUST
20 SOME CLARIFICATION THAT I DID WANT TO -- TO KIND OF
21 RECTIFY HERE IS, AS WE CAN SEE HERE THIS IS A DOCUMENT
22 OF MY ELEMENTARY SCHOOL'S TRANSCRIPT. AND ONE THING
23 THAT I DID WANT TO TALK ABOUT IS, IN THE FIRST GRADE WE
24 -- WE WERE ADDRESSING THE CONDUCT IN THERE, AS BEING
25 SATISFACTORY, "SS", BUT I DO WANT TO MAKE IT KNOWN THAT

1 IT WAS QUITE CLEAR THAT MY MOTHER WAS -- PLAYED A BIG
2 PART IN THAT BY COMMUNICATING WITH THOSE TEACHERS THERE.

3 BUT AS WE CAN SEE GOING FORWARD, IN THE
4 THIRD GRADE AND FOURTH GRADE, THESE -- WE CAN SEE THAT
5 THE CONDUCT IS A DRAMATIC DIFFERENCE THERE WITH N'S IN
6 CONDUCT FOR NON SATISFACTORY, AND "U", FOR
7 UNSATISFACTORY. SO I DID WANT TO MAKE SURE THAT THAT
8 WAS POINTED OUT AS WELL.

9 WITH THIS CASE -- IF WE CAN SCROLL OVER
10 TO THE LEFT JUST A LITTLE BIT SO WE CAN SEE -- OR ZOOM
11 OUT JUST A TAD SO WE CAN SEE THE -- YES, THANK YOU.

12 AGAIN, WITH MY CASE HERE, IT IS ABOUT
13 CONCENTRATION AND BEING ABLE TO READ EXAM QUESTIONS;
14 RIGHT?

15 SO WHEN WE LOOK HERE, WE ARE LOOKING AT
16 MY READING, IF WE SEE THE SUBJECT HERE -- IF YOU CAN USE
17 THE CURSOR WHERE I AM SAYING -- AND COME OVER TO FIRST
18 GRADE, WE CAN SEE ACCORDING TO MY TESTIMONY AND ALSO MY
19 MOM'S, THESE WERE THINGS THAT -- WAS THE INDICATOR THAT
20 THE SCHOOL WANTED TO OR MY TEACHER WANTED TO HOLD ME
21 BACK. SO IT WAS ALL UNSATISFACTORY.

22 AND IF WE CAN GO EVEN FURTHER ACROSS WE
23 CAN SEE THAT IN SECOND GRADE THESE PARTICULAR -- THIS
24 PARTICULAR SUBJECT WAS LOWER THAN ANY OTHER SUBJECTS
25 HERE. IN THE THIRD GRADE, WE HAVE A FAILING GRADE OF A

1 67. THEN A 71, WHICH WAS A BARELY PASSING AT -- WITH
2 THE PASSING BEING A 70 PERCENT. AND THEN WE EVEN SEE A
3 43 PERCENT ON MY REPORT CARD. AND THEN A 77.

4 SO WE CAN SEE A DRAMATIC CHANGE. EVEN IN
5 THE FOURTH GRADE, WE SEE FAILING GRADES HERE OR BARELY
6 MAKING IT TO A PASSING GRADE AT A 70, AND A 72 FINAL --
7 PERCENTS FOR THOSE.

8 SO -- AND ANOTHER THING THAT I WANTED TO
9 ALSO MAKE SURE I BROUGHT UP HERE, PREVIOUSLY -- WE CAN
10 MOVING OVER TO THE LEFT, PLEASE. TOWARDS THE SAIL
11 PROGRAM.

12 WHETHER OR NOT WE -- YOU KNOW, IT HAS
13 BEEN TESTIFIED BEFORE THAT A PERSON THAT WOULD HAVE ADHD
14 WOULD SHOW THAT THEY HAVE GRADES THAT WOULD BE SUB PAR
15 OR INSUFFICIENT, ET CETERA, AND EVEN HAVE AN
16 INDIVIDUALIZED SCHOOLING THERE OR EDUCATION.

17 AND I WANT IT TO BE NOTED THAT WE CAN SEE
18 HERE, IN THE FOURTH GRADE, I -- WHICH I WAS NOT AWARE OF
19 THIS, IT SAYS THAT I WAS IN THE SAIL PROGRAM. WHETHER
20 OR NOT WE KNOW WHAT THE SAIL PROGRAM ACTUALLY MEANS OR
21 NOT, WE SEE THAT THE TEACHER WROTE DOWN FOR MY READING,
22 AND OVER TO THE LEFT OF IT IT SAYS THAT IT IS
23 INDIVIDUALIZED INSTRUCTION.

24 SO I DID WANT TO MAKE SURE THAT I TOUCHED
25 ON THAT. AND IT'S ALREADY IN THE RECORD. WE CAN REMOVE

1 THAT ONE. OR, FOR TIME SAKE I WOULD LIKE TO MOVE PRETTY
2 QUICK, YOUR HONOR.

3 WHEN WE LOOK AT -- IF WE CAN PULL UP JX
4 3, WHICH IS MY HIGH SCHOOL TRANSCRIPT? WE TALKED ABOUT
5 -- WHAT I WOULD LIKE TO SEE HERE IS -- IT WAS MADE A
6 POINT ABOUT MY AP COURSES AND THAT -- AND IT SEEMS LIKE
7 IT -- YOU KNOW, I DON'T WANT TO SUGGEST WHAT COUNSEL WAS
8 -- WAS LEADING TO, BUT I DO WANT IT TO BE KNOWN THAT
9 WHEN WE ARE LOOKING AT THIS THESE PARTICULAR COURSES,
10 SUCH AS -- IF WE CAN SEE AP BIOLOGY, AT THE TOP, THE
11 MIDDLE COLUMN. YES, THE VERY TOP. GO UP ONE.

12 WE SEE THAT I DID HAVE AN 88 PERCENT IN
13 THAT CLASS. AND THEN IF WE GO DOWN WE SEE AP BIOLOGY,
14 AGAIN, AT A 91 PERCENTILE. AND WE ALSO SEE, RIGHT UP
15 UNDER THAT WE HAVE -- UP UNDER THAT PARTICULAR AP
16 BIOLOGY, WE HAVE HEALTH. THIS IS HEALTH CAREER. THIS
17 WAS WHERE WE WOULD GO INTO THE HOSPITALS A CERTAIN
18 AMOUNT OF STUDENTS, IT WAS SIX US OF US IN THAT
19 PARTICULAR CLASS, AND I HAD A 85 PERCENTILE IN THAT
20 SCIENCE COURSE AS WELL.

21 AND ALSO, I KNOW THAT I HAVE ALREADY
22 TOUCHED ON IT THERE, THE ACT PREP COURSE, WHICH WAS ALSO
23 CONSIDERED AN INDIVIDUALIZED COURSE WHO THOSE WHO HAVE
24 HAD TO REPEAT THE ACT BECAUSE OF SUCH INSUFFICIENT
25 SCORES. AND I WANT IT TO BE ALSO KNOWN THAT IN THESE AP

1 COURSES, ESPECIALLY IN MY AP BIOLOGY COURSE, THERE WAS
2 ONLY FIVE OF US IN THAT -- IN THAT PARTICULAR COURSE.

3 AND THE IMPORTANCE OF THAT, AS I SAID
4 BEFORE, OF THE BACKGROUND OF HOW MY SCHOOL WAS -- WAS
5 STRUCTURED, IS YOU GO DOWN DIFFERENT PATHWAYS TO KIND OF
6 SOLIDIFY OR KIND OF -- YEAH, SOLIDIFY THAT SMALL AMOUNT
7 OF NUMBER IN SUCH A COURSE FOR HIGH SCHOOL, IS THAT YOU
8 GO DOWN THOSE DIFFERENT PATHWAYS AS WELL.

9 SO THAT THERE WASN'T -- AGAIN, IT WAS
10 LIKE AN INDIVIDUAL -- AS ONE-ON-ONE WITH THE PROFESSORS
11 THERE -- WITH MY TEACHERS, JUST BECAUSE OF SUCH A SMALL
12 AMOUNT OF TIME.

13 IF YOU CAN LOOK AT THE 12TH GRADE, THAT
14 SAME COLUMN, YES, YOU SEE THAT IT SAYS "CLINICAL
15 INTERNSHIP," THERE. YES. CLINICAL INTERNSHIP, AND IT
16 SAYS THAT I HAD A 92 PERCENT. THIS WAS THE ONLY FOUR
17 SENIORS WHO WAS INSPIRING TO GO INTO THE MEDICAL FIELD.

18 AGAIN, WE WENT DOWN THE SCIENCE TRACK
19 HERE AND THIS IS THE NEXT LEVEL FROM THE OTHER CLINICAL
20 COURSE. AND YOU CAN SEE THERE WE -- I GAINED A -- A
21 VERY GOOD SCORE THERE OF A 92 PERCENT, SHOWING THAT MY
22 SUFFICIENCY IN ACTUALLY BEING INSIDE OF THE -- OF THE
23 HOSPITAL CLINICAL THERE. AND THIS IS ALREADY IN THE
24 RECORD.

25 SO I WOULD LIKE TO MOVE ON NOW TO JX 4,

1 WHICH SHOULD BE THE BEREA TRANSCRIPT. YES.

2 SO AS WE CAN SEE HERE IT WAS MADE A POINT
3 HERE ABOUT FOCUSING IN ON MY SCIENCE GPA, AND I WANT IT
4 TO BE KNOWN THAT JUST BECAUSE A PERSON HAS A LOWER GPA
5 OR A -- LOWER GRADES -- WE LOOKED AT THE CHEMISTRY
6 COURSE WITH A D, AND WHICH I -- LET'S SEE IF I CAN SEE
7 WHERE THAT WAS LOCATED.

8 ACTUALLY FOR TIME SAKE, MS. MEW YESTERDAY
9 SHOWED US THOSE -- THOSE PARTICULAR SCORES. FOR THAT
10 CHEMISTRY COURSE I HAD A D IN THERE. AGAIN, I DID NOT
11 HAVE ANY UNOFFICIAL ACCOMMODATIONS IN THAT PARTICULAR
12 CLASS. WHICH, HINDSIGHT, I DEFINITELY WOULD HAVE WANTED
13 TO GO BACK THERE AND DO THAT AND ASK FOR IT.

14 AND FOR MY BOTANY COURSE, I DID HAVE
15 THOSE UNOFFICIAL ACCOMMODATIONS WHEN I HAD A C PLUS IN
16 THERE. AND I WANT IT TO ALSO BE KNOWN THAT THESE
17 PARTICULAR GRADES HERE, AND MY SCIENCE GPA, ARE WAY -- A
18 LITTLE BIT DIFFERENT FROM MY MAJOR COURSES BECAUSE IF
19 YOU LOOK AT THE DIFFERENCE BETWEEN -- AGAIN, WITH THIS
20 PARTICULAR CASE, WE ARE NOT TALKING ABOUT WHETHER OR NOT
21 I CAN -- WHETHER OR NOT I CAN PERFORM TASKS IN -- IN
22 LIFE, SUCH AS -- OUTSIDE OF READING AND COMPREHENSION
23 AND SUCH A HIGH STRESSFUL SITUATION.

24 AND WITH MUSIC, THOSE THINGS ARE MORE
25 HANDS ON AND I AM A HANDS ON PERSON. AND THIS IS WHY IT

1 IS PREVALENT OR WHY IT HAS BEEN SHOWN THROUGH
2 DOCUMENTATION OF MY TRANSCRIPTS IN EVEN MEDICAL SCHOOL,
3 WHERE THOSE CLASSROOM COURSES WERE MUCH LOWER THAN THE
4 CLINICAL -- THE CLINICAL ROTATIONS, WHICH IS -- WHICH IS
5 SHOWING THAT THOSE GRADES FROM THE CLINICALS -- AND I'M
6 SORRY, YOU CAN TAKE THIS DOCUMENT DOWN. I THINK IT'S
7 ALREADY IN THE RECORD AS WELL -- ARE SHOWING THE
8 DIFFERENCE BETWEEN SITTING IN A CLASSROOM, HAVING TO
9 FOCUS AND TAKING AN EXAM, VERSUS IN MY CLINICALS, BEING
10 HANDS ON, TALKING WITH PATIENTS AND APPLYING THE
11 KNOWLEDGE, ALSO SHOWING THAT ON THE MERITS THE
12 INFORMATION IS CLEAR.

13 OTHERWISE, THE DOCTOR -- AS WE HEARD FROM
14 DIFFERENT TESTIMONIES, HAD TO REPEAT A CERTAIN ROTATION.
15 THEY ARE NOT GOING TO ALLOW -- BECAUSE SEE, THE DOCTORS,
16 THEIR JOB IS TO MAKE SURE THAT WE ARE TRAINED SO THAT
17 WHEN WE GO ON WE ARE NOT GOING TO KILL SOMEONE. YOU
18 KNOW, THAT'S THE -- I MEAN, THAT'S THE -- THAT'S THE
19 REAL -- THE BIG DEAL OF THOSE THINGS AND THE DOCTORS
20 WILL TELL YOU, AND THEY ARE VERY HARD ON YOU.

21 I MEAN, ITS LIKE MILITARY, IS WHAT WE
22 ALWAYS USED TO SAY AS STUDENTS. BECAUSE IT WAS VERY
23 STRICT, AND SO IF YOU DID NOT HAVE THAT INFORMATION TO
24 BE ABLE TO APPLY IT RIGHT THEN AND THERE, BECAUSE -- AND
25 TO GIVE AN EXAMPLE, WE COULD BE STANDING RIGHT OVER A

1 PATIENT IN A TEACHING HOSPITAL -- THIS IS INFORMATION
2 THAT'S WELL KNOWN, THE PATIENTS BE LAYING IN THE BED AND
3 YOU HAVE TO PRESENT TO YOUR -- TO YOUR ATTENDING, AND HE
4 MAY HAVE ASKED YOU QUESTIONS ABOUT DIFFERENT THINGS YOU
5 MIGHT HAVE MISSED, RIGHT THERE ON THE SPOT AND IN FRONT
6 OF THE PATIENT.

7 SO THOSE GRADES THERE SHOULD BE WEIGHED
8 HEAVIER THAN THOSE LOWER GRADES TO SAY MAYBE THIS PERSON
9 IS NOT A GOOD STUDENT AND MAYBE THEY JUST WASN'T
10 PREPARED TO TAKE THESE EXAMINATIONS.

11 AND I WILL MOVE ON NOW TO -- IF WE CAN
12 PULL UP NOW DX 3? DX 3, PLEASE?

13 SORRY, YOUR HONOR. YOU SAID NOT TO
14 DISCUSS THINGS AND I DID NOT DISCUSS OR -- OR GIVE MY
15 WIFE AN UPDATE OF WHAT I WAS GOING TO BE DOING, SO...

16 SO IN THIS PARTICULAR -- IN THIS DOCUMENT
17 HERE, SO -- THAT WE BROUGHT UP ABOUT THE TUTORING
18 COURSES, THE KEY ABOUT -- THE KEY THING ABOUT THIS IS
19 THAT BEFORE WE -- WE ZOOMED IN ON ONE PARTICULAR
20 TUTORING COURSE, WHICH WAS THE VERY FIRST TUTORING
21 COURSE, NOT TO MENTION THE SEVERAL OTHER COURSES THAT I
22 -- THAT I ATTENDED AFTER THAT.

23 ONE, AND THAT I ALSO HAVE HERE IN MY -- I
24 THINK THIS IS MY DECLARATION? YES, I BELIEVE SO.

25 SO AND WITH -- AND IN THIS PARTICULAR

1 AREA, WE WERE TALKING ABOUT THE SMASH USMLE, BUT AFTER
2 THAT ONE I ALSO DID THE STEP PREP A.B.C., AND THEN --
3 AND THEN I ALSO -- SORRY, THAT WAS THE THIRD ONE.

4 AND THE SECOND ONE THAT I DID WAS ALSO
5 THE PREP EAGLE COURSE, WHICH WAS AN INTENSE THREE-WEEK
6 LONG MONDAY THROUGH FRIDAY, FROM 8 A.M. TO 5 P.M., WITH
7 A LUNCH BREAK. AND WE ALSO HAD PREPS WHERE WE HAD TO GO
8 THROUGH PRACTICE QUESTIONS ONE-ON-ONE TUTORING EVERY
9 SINGLE DAY. AND AT THE END OF EVERY DAY YOU MET WITH
10 THE ACTUAL OWNER WHO IS AN EMERGENCY MEDICINE PHYSICIAN.

11 NOT ONLY THAT, FOR THE PROGRAM OF THE
12 SMASH USMLE, AS WE CAN SEE HERE, THE SMASH USMLE IS ALSO
13 -- YOU ALSO MEET WITH HIM AND INDIVIDUALIZED TUTORING
14 WITH THE -- THE M.D., WHO OWNS IT -- WHO -- I'M SORRY,
15 WHO IS THE C.E.O., WHO IS ALSO AN INTERNAL MEDICINE
16 PHYSICIAN AND WHO'S WROTE SEVERAL DIFFERENT PREP BOOKS
17 AND USED WORLDWIDE. AND ESPECIALLY FOR INTERNATIONAL
18 MEDICAL GRADUATES, TO HELP TAILOR, TO HELP THEM TO SEE
19 THE BIGGER PICTURE.

20 SO IT WAS NOT FROM THE LACK OF, WELL, I
21 TOOK A PREP COURSE, YOU KNOW, A WHOLE YEAR IN ADVANCE
22 AND NOW I JUST EXPECTED TO PASS THE USMLE AS WELL. SO
23 WE CAN NOW TAKE DOWN AND I THINK THIS IS ALREADY IN THE
24 RECORD AS WELL.

25 IF WE COULD, LET'S SEE, IF WE CAN PULL UP

1 THE CBSE, WHICH IS PX 52, PX 52. YES.

2 SO AGAIN, I WANTED TO TOUCH JUST A TAD
3 BIT BECAUSE I KNOW I KIND OF TALKED ABOUT IT ALREADY
4 JUST FOR TIME SAKE. HERE I WANT IT TO BE UNDERSTOOD
5 THAT THIS EXAMINATION WAS -- WAS AUTHORIZED BY MY
6 UNIVERSITY, NOT NECESSARILY THROUGH ME, AND YES, IT WAS
7 PROCTORED. THE DIFFERENCE HERE WITH THIS PARTICULAR
8 SCORE IS, AGAIN, I CAN TAKE IT AS MANY TIMES, THERE IS
9 NO REPERCUSSIONS ON IT. AND I HAD OTHER THINGS THAT
10 WERE IMPORTANT TO ME AT THAT TIME AND THIS PARTICULAR
11 SCORE HERE, I WOULD SAY WITH CONFIDENCE, WAS NOT THE
12 ACCURATE REPRESENTATION OF MY -- OF MY -- ACCURATE
13 REPRESENTATION OF MY KNOWLEDGE WITH THOSE
14 ACCOMMODATIONS.

15 AND GOING FORWARD, IF I WOULD HAVE TAKEN
16 THE EXAM AGAIN I WOULD HAVE STILL GOTTEN THOSE
17 ACCOMMODATIONS BUT I DO -- ALSO, IF WE CAN BRING UP THE
18 CBSSA, IF WE CAN TAKE THIS ONE DOWN. I THINK IT IS
19 ALREADY IN THE RECORD. PX 53. PX 53.

20 THIS IS A DOCUMENT ON ME TAKING THE CBSSA
21 ON FEBRUARY THE 14TH. IT WAS -- YOU KNOW, IT WAS
22 BROUGHT TO THE ATTENTION TO THE COURT THAT -- THAT THIS
23 EXAMINATION IS NOT PROCTORED, AND IT IS TAKING HERE, AT
24 MY HOME. IF YOU COULD SCROLL DOWN TO THE -- JUST KEEP
25 GOING DOWN TO THE VERY LAST PAGE. LET ME SEE. AND KEEP

1 GOING, KEEP GOING, KEEP GOING. STOP. HERE. SCROLL UP
2 JUST A LITTLE BIT. YES.

3 SO WE CAN SEE THAT THIS WAS FORM 25, AND
4 IT WAS MADE AWARE THAT THIS FORM HAD BEEN TAKEN BEFORE,
5 BY MYSELF. AND THAT IS TRUE, BUT WE NEED TO ALSO
6 REMEMBER THAT THE -- REMEMBER THIS -- THE TIMING OF
7 THIS. MS. MEW MADE IT CLEAR THAT ON JULY THE 11TH,
8 2021, I TOOK THAT EXAM. AND THEN ON FEBRUARY 14TH, AS
9 WE SEE HERE, I TOOK THE EXAM.

10 SO WE ARE TALKING -- YOU KNOW, SEVEN PLUS
11 MONTHS LATER ON DOWN THE ROAD OF ME RE TAKING THIS
12 EXAMINATION. THE KEY POINT HERE IS THAT WE SEE THAT IT
13 SAYS "STANDARD PACE," WHICH MEANS THAT IT IS TIMED. YOU
14 CANNOT JUST GO OUT OF THE EXAM OR REVISIT IT, ET CETERA,
15 BECAUSE THAT TIME WILL KEEP GOING IF YOU ARE WITHIN THAT
16 PARTICULAR -- IF YOU ARE WITHIN THAT BLOCK.

17 IF SOMEONE, HYPOTHETICALLY, WAS TO SCREEN
18 SHOT THOSE QUESTIONS FROM THEIR PREVIOUS FORM TO TAKE ON
19 THIS PARTICULAR EXAMINATION, THE QUESTION WOULD REALLY
20 COME DOWN TO IT IS, WOULD THAT BENEFIT THE CANDIDATE,
21 ESPECIALLY KNOWING THAT THEY ARE HAVING TO TAKE THE STEP
22 1 EXAMINATION ONLY LESS THAN A A WEEK, OR A WEEK DOWN
23 THE ROAD.

24 I DON'T THINK THAT WOULD BENEFIT THEM.
25 ONE. TWO, IF THEY DID SCREEN SHOT THE QUESTIONS -- OR

1 BECAUSE THEY -- YOU KNOW THAT IS A POSSIBILITY TO BE
2 ABLE TO DO, IF THAT WAS DONE, IT WOULD BE VERY HARD FOR
3 THAT -- SORRY, NOT PATIENT -- IT WOULD BE VERY HARD FOR
4 THAT TEST TAKER TO TRY TO FIND THOSE QUESTIONS, BECAUSE
5 AGAIN IT IS A SCREEN SHOT. IT'S NOT LIKE A WORD
6 DOCUMENT.

7 SO WITH THAT SCREEN SHOT THEY WON'T
8 NECESSARILY HAVE THE TIME TO GO AND LOOK FOR THAT
9 QUESTION. AND AGAIN, IT -- EVEN THOUGH IT IS THE SAME
10 QUESTIONS, IT WON'T BE IN THE SAME ORDER EVERY SINGLE
11 TIME YOU GO IN IT. QUESTION NUMBER ONE, IN FORM -- I
12 MEAN IN BLOCK ONE, QUESTION ONE, MAYBE BLOCK FOUR
13 QUESTION 25.

14 SO IT'S NOT REALLY FEASIBLE FOR -- OR
15 LOGICAL FOR A PERSON TO ACTUALLY CHEAT THEMSELVES. IT'S
16 NOT BENEFICIAL TO THEM. SO -- SO YES, BUT IF WE COULD,
17 PULL UP THE FORM 25? SORRY, FORM 29, THAT I -- SORRY.
18 I FORGET WHICH -- ONE SECOND, I WANT TO PULL UP THE --
19 THE FORM WHERE WE HAD THE ENTIRE -- ONE SECOND HERE.
20 CAN WE PULL UP -- YES, AND CAN YOU SCROLL DOWN, PLEASE
21 TO SHOW THAT FORM. AND ZOOM IN, PLEASE. THANK YOU.

22 WE SEE HERE -- SORRY, THIS IS FORM 30.
23 THIS IS FORM 30. AND IT WAS TAKEN ON -- YES, FORM
24 12022. AND -- BUT THIS IS -- NO, THIS IS NOT THE FORM I
25 AM ACTUALLY LOOKING FOR, BUT WE CAN STAY HERE WITH THIS

1 ONE.

2 THIS PARTICULAR FORM WE TALKED ABOUT --
3 YOU KNOW, AGAIN GOING WITH REPEATING THIS FORMS. WELL,
4 COUNSEL FORGOT TO MENTION THAT ON THIS PARTICULAR FORM
5 -- AND SCROLL ALL THE WAY UP TO THE TOP WHERE WE SEE THE
6 PASSING SCORE -- THIS WAS A FORM THAT I HAD NEVER TAKEN
7 BEFORE. I HAVE NEVER FORM 30 BEFORE, NOR FOR FORM 29,
8 WHICH WAS ALSO A PASSING SCORE, I HAD NEVER TAKEN
9 BEFORE.

10 SO -- AND AGAIN, IT WOULD NOT BENEFIT ME
11 AND THIS IS ALSO SHOWING THAT ON MY OWN ON MERITS, ON
12 STANDARD PACE -- ESSENTIALLY THOSE ACCOMMODATIONS FOR
13 MYSELF, I WAS ABLE TO PASS ON MY MERITS.

14 IT IS ALSO TO BE NOTED THAT TO BE ABLE TO
15 BE PROCTORED, TO THE BEST OF MY KNOWLEDGE, TO BE ABLE TO
16 BE PROCTORED FOR THE NBME -- WELL, WE CALL IT THE NBME,
17 BUT FOR THE CBSSA, YOU HAVE TO BE A MEDICAL STUDENT,
18 BECAUSE YOUR SCHOOL ORDERS THIS AND THEY ORDER IT TO GO
19 THROUGH THE -- THE CBSSA.

20 IT'S NOT, TO MY KNOWLEDGE, THAT YOU CAN
21 GO AND REGISTER WITH THE -- WITH THE PROMETRIC CENTER
22 AND THEN E-MAIL THEM ANY OF THESE -- THESE EXAMINATIONS
23 THAT I PERSONALLY ORDERED AND NOT THE UNIVERSITY
24 ORDERED. AND I THINK -- AND ACTUALLY, I DON'T -- I
25 WOULD LIKE TO PUT IN TO THE RECORD PX 55?

1 I'M NOT SURE IF IT'S IN THERE AS OF YET.

2 MS. MEW: NO OBJECTION.

3 THE COURT: PX 55 ADMITTED.

4 (PLAINTIFF EXHIBIT 55 IS ADMITTED INTO
5 EVIDENCE.)

6 DR. KITCHENS: OKAY. AND CAN WE PULL UP
7 DX 84, PLEASE? DX 84. ALL RIGHT. THANK YOU.

8 SO WE TALKED ABOUT THIS LETTER HERE THAT
9 I ASKED MY WIFE TO PRODUCE ON MY BEHALF. IF WE CAN
10 SCROLL DOWN SOME SO WE CAN SEE THIS. AND I -- YES, AND
11 SCROLL UP? THANK YOU. HERE.

12 SO I WANT IT TO BE KNOWN THAT -- AT THIS
13 TIME -- YOU KNOW -- I ASKED MY WIFE TO WRITE THIS LETTER
14 ON MY BEHALF. AND WE DID NOT HAVE THE KNOWLEDGE THEN TO
15 KNOW THAT -- BECAUSE WE WASN'T IN ANY CIVIL LITIGATION
16 AT THOSE TIMES AND OF COURSE, I ASKED HER -- BECAUSE
17 AGAIN, I LOOKING AT MYSELF AS I AM THE LITTLE PERSON, IT
18 IS JUST ME, I AM AN IMG, AND THE PERCEPTION, YOU KNOW,
19 COULD BE THAT, WELL, THIS PERSON PROBABLY DOES NOT HAVE
20 THOSE -- THE RESOURCES OR THE WEIGHT BEHIND THEM TO
21 ACTUALLY FORCE US TO DO SOMETHING.

22 AND EVEN -- SO, I WANTED MY WIFE'S
23 LETTERHEAD TO BE KIND OF LIKE HEY, LISTEN, YOU GUYS NEED
24 TO REALLY LEAN IN ON THIS AND REVIEW THIS. OTHERWISE,
25 WE ARE GOING TO TAKE SOME LEGAL ACTION HERE, HOPING THAT

1 THIS WOULD GET THEIR ATTENTION.

2 IN THAT E-MAIL, WHEN I CAME HOME, WHEN I
3 SAW THE SCORE AND I WAS ALSO THINKING TO MYSELF LIKE,
4 WAIT A SECOND, THIS CAN'T BE RIGHT. I TOOK 320
5 QUESTIONS, WHICH HAS BEEN CLEAR THAT I HAVE NOT TAKEN
6 320 QUESTIONS.

7 AND THAT IT WAS ONLY THE 280 QUESTIONS
8 THAT ARE GIVEN ON THE EXAMINATION, WHICH ALSO
9 DEMONSTRATES THE LACK OF ATTENTION AND CONCENTRATION
10 THAT I WAS ABLE TO HAVE ON THIS HIGH STAKES EXAMINATION.

11 AND I THINK THIS IS ALREADY IN THE RECORD
12 AS WELL, DX 84. LET'S SEE IF WE CAN -- ALMOST DONE
13 HERE. YES, IF WE CAN PULL UP JX 10, PLEASE? JX 10.

14 SO JX 10 IS A DOCUMENT OF MY -- MY USMLE
15 STEP -- STEP SCORE THAT I TOOK ON MAY 9TH. YOU KNOW, IT
16 -- IT WAS MADE APPARENT THAT, YOU KNOW, I DID NOT APPLY
17 FOR ACCOMMODATIONS ON THIS PARTICULAR EXAMINATION AND I
18 JUST WANT TO -- TO STATE FOR THE RECORD, AGAIN, THAT
19 WHEN I APPLIED FOR -- ORIGINALLY, FOR THE -- FOR
20 ACCOMMODATIONS, I DID NOT WAIT UNTIL AFTER I HAVE TAKEN
21 ONE OF THE EXAMS AND FAILED THE EXAM, AND THEN SAY THAT
22 I HAVE THIS DISABILITY AND I WANT TO APPLY FOR
23 ACCOMMODATIONS.

24 I APPLIED FOR THE ACCOMMODATIONS
25 ORIGINALLY, BEFORE EVER TAKING THE EXAM AND I DID IT IN

1 A -- A TRANSPARENT WAY. I NEVER QUESTIONED ANY OF THE
2 -- YOU KNOW, THE VALIDITY OF THE DOCUMENTATION FROM MY
3 PHYSICIAN, EVEN THOUGH IT WAS A -- YOU KNOW, WHAT --
4 WHAT CAN BE PERCEIVED TO BE A -- A SHORTER OR NOT
5 SUFFICIENT ENOUGH DOCUMENTATION FOR THOSE WHO DON'T
6 UNDERSTAND WHO TO READ THESE PARTICULAR LETTERS OF
7 RECOMMENDATIONS.

8 IT WAS TRANSPARENT. I WAS NOT TRYING TO
9 GET A GAIN. AND SO GOING FORWARD, MY TRUST, OR -- OF --
10 MY TRUST IN THE NBME'S SYSTEM TO ACCOMMODATE THOSE WHO
11 HAVE A DIAGNOSES OR HAS A DISABILITY WAS SUBSTANTIALLY
12 LOWERED AND I WAS JUST LIKE, I'M GOING TO APPLY AND THEY
13 ARE JUST GOING TO DENY ME ANYWAY, I DON'T HAVE ANY MORE
14 INFORMATION, ET CETERA.

15 SO I'M GOING TO GO AHEAD -- AND AGAIN,
16 SINCE I HAVE TAKEN THE PRACTICE EXAMINATION THAT SHOWED
17 THIS, THAT I WOULD HAVE PASSED WITH HAVING THESE --
18 THESE ACCOMMODATIONS, MEANING IN MY OFFICE, ET CETERA,
19 TIME IS OF THE ESSENCE AND TIME IS NOT ON MY SIDE IN
20 THIS CASE. SO I DIDN'T HAVE THE CHOICE BUT TO GO AHEAD
21 AND TO TAKE THIS EXAMINATION WITHOUT APPLYING FOR THOSE.

22 AND THAT -- THAT GOES WITH ANY OTHER OF
23 THE EXAMINATIONS THAT I TOOK WITHOUT REAPPLYING FOR
24 THOSE ACCOMMODATIONS THERE. AND THIS IS ALREADY IN THE
25 RECORD.

1 IF WE CAN GO TO DX 93?

2 DX 93 IS THE PHONE CALL THAT WE -- THAT I
3 CALLED IN THERE. AND CAN WE SCROLL DOWN, PLEASE? KEEP
4 GOING. ONE SECOND. SCROLL DOWN SOME MORE. SCROLL DOWN
5 SOME MORE. STOP HERE, PLEASE.

6 SO ON THIS PHONE CALL, FOR AN --
7 ESPECIALLY FOR AN INTERNATIONAL MEDICAL GRADUATE, I CAN
8 TELL YOU THAT MAJORITY -- WELL, I CANNOT SPEAK FOR OTHER
9 PEOPLE BUT WHAT I WILL SAY, FROM MY EXPERIENCE AND THE
10 WAY I FEEL PERSONALLY IS THAT, AS AN IMG, WE HAVE TO GO
11 THROUGH THESE EXTRA LOOPHOLES.

12 AND EVEN AS AN AMERICAN, YOU KNOW, EVEN
13 FOR THE PRELIMINARY INJUNCTION, I WAS NOT ABLE TO EVEN
14 GO THROUGH WITH THAT BECAUSE OF A TECHNICALITY OF HAVING
15 TO TAKE AN ENGLISH EXAMINATION, WHICH IS -- I UNDERSTAND
16 AND I CAN APPRECIATE WHY THAT IS IN PLACE FOR THOSE WHO
17 ARE COMING FROM NON ENGLISH SPEAKING COUNTRIES, YOU
18 KNOW, THOSE TYPE OF THINGS I CAN APPRECIATE THAT, BUT AS
19 A BORN U.S. CITIZEN WHO SPEAKS ENGLISH AS MY -- MY FULL
20 -- AS MY ONLY LANGUAGE, YOU KNOW, THOSE ARE LOOPHOLES
21 THAT WE HAVE TO -- THAT ARE PUT THERE THAT WE HAVE TO
22 PAY MORE MONEY TO SIT AND TAKE THESE THINGS, AND ALSO
23 HINDER TIME AS WELL.

24 SO WHEN WE LOOK AT THESE THINGS, WHEN WE
25 HAVE A FAILED SCORE OR WE DON'T REALLY -- OR EVEN PEOPLE

1 WHO HAS PASSED A USMLE AND GOT EVEN A LOWER SCORE THAN
2 WHAT THEY FELT THEY SHOULD HAVE HAD AND QUESTIONED THE
3 VALIDITY OF THOSE TEST SCORES, WE WRITE IN TO THE NBME
4 WITH LITTLE TO NO EFFECT FROM THEM.

5 SO YOU HAVE TO USE CERTAIN LANGUAGE HERE
6 TO ACTUALLY SAY -- FOR THEM TO ACTUALLY -- TO GET THEM
7 TO RECOGNIZE IT. AND THE TRUST IN THEIR SYSTEM AND --
8 THE TRUST IN THEIR SYSTEM TO CORRECTLY GRADE YOUR -- TO
9 GRADE YOUR SCORES IS JUST NOT THERE.

10 AS WE CAN SEE HERE, IT SAYS -- THE FIRST
11 LINE WHERE IT SAYS, "NBME," IT SAYS -- SORRY, IF WE CAN
12 SCROLL UP JUST A LITTLE BIT TO GIVE A LITTLE BIT OF
13 FOUNDATION TO THAT HERE, PLEASE. YES.

14 I SAID TO THEM, IT IS TRUE THAT IT IS --
15 NO NBME SAID TO ME, "IT IS TRUE THAT IT IS VERY UNLIKELY
16 THAT A SCORE WILL CHANGE. I HAVE BEEN HERE A LITTLE
17 OVER 12 YEARS AT THE NATIONAL BOARD," I GUESS OF MEDICAL
18 EXAMINERS AND SHE'S SAYING THAT NO, I HAVE NEVER SEEN
19 OUR SYSTEM, BECAUSE THERE IS NO WAY POSSIBLE FOR OUR
20 SYSTEM TO BE WRONG, EVEN THOUGH WE ARE SEEING IN OTHER
21 HIGH SAKES EXAMINATIONS, SUCH AS THE LSAT, HAS BEEN
22 WRONG AND HAS SENT OUT PASSING SCORES TO PEOPLE WHO DID
23 NOT PASS AND VICE VERSA AND HAD TO COME OUT PUBLICLY AND
24 SAY, WHOA, GUYS SORRY, WE HAD TO CHANGE THIS.

25 BUT NOT THE MEDICAL BOARD OF MEDICAL

1 EXAMINERS, NO. AND THAT MAKES IT HARD TO BELIEVE. AND
2 THAT IS WHEN I SAID HERE, THEY -- THAT -- SHE EVEN
3 REITERATED THAT ON -- THE NBME SAYS TO ME THAT "I HAVE
4 NOT KNOWN" -- "THANKS. I HAVE NOT KNOWN A SCORE TO
5 CHANGE AS A RESULT OF A SCORE RECHECK. I HAVE NEVER
6 SEEN THAT HAPPEN."

7 SO HOW IS IT THAT A PERSON WHO IS TAKING
8 AN EXAM IS SUPPOSED TO TRUST THAT, WHEN THEY WON'T ALLOW
9 YOU TO GO BACK TO THAT SECURE LOCATION, PROCTORED AS
10 THEY HAVE -- AS IT HAS BEEN SAID, PROCTORED LOCATION TO
11 GIVE THAT EXAM AND FOR YOU TO LOOK AT THE VERY SAME EXAM
12 THAT YOU TOOK AND GO THROUGH THE SAME PROTOCOLS TO GO
13 INTO THAT SECURED LOCATION TO REVIEW YOUR EXAMINATION.

14 NOW, I UNDERSTAND THAT -- AND I CAN
15 APPRECIATE THE NBME TO PROTECT THE INTEGRITY OF THEIR
16 EXAM. I UNDERSTAND THAT. BUT THERE SHOULD BE SOMETHING
17 MORE IN -- IN PLACE, SOME TYPE OF GUIDELINES IN PLACE TO
18 ACTUALLY EASE THE PERSON, THE APPLICANT, OR THE TEST
19 TAKER'S MIND WHEN THEY SAY LISTEN, YOUR SCORE IS CORRECT
20 BECAUSE HERE, YOU CAN SEE -- AND I'M SURE LATER ON THAT
21 -- POSSIBLY THAT THE -- COUNSEL MAY BRING UP AN EXAM OF
22 THIS -- WHERE IT WOULD SAY STEP 1, BLOCK ONE, IT HAS THE
23 DATE, AND THEN THEY WILL -- IT SAYS, WAS A SCORE GIVEN
24 ONE OR ZERO, YES OR NO, WHAT ANSWER CHOICE DID THE --
25 THE PATIENT, DID THE -- THE TEST TAKER MARK, BUT THEN

1 THERE IS NOTHING ABOUT WHAT ANSWER WOULD HAVE -- OR
2 SORRY, THE LETTER SO IT WOULD A, B, C, D, OR E, THAT'S
3 IT, AND WHAT THE CORRECT ANSWER CHOICE WAS A, B, C, D,
4 OR E, AND ALSO TO SAY WHETHER OR NOT THAT PARTICULAR
5 QUESTION WAS EXPERIMENTAL OR NOT.

6 BECAUSE WHEN YOU DON'T TELL THAT
7 INFORMATION, IT DOESN'T LET YOU KNOW WHETHER OR NOT YOU
8 WERE -- THAT THAT SCORE WAS ACTUALLY GRADED AND WENT
9 TOWARDS YOUR SCORE, WHETHER OR NOT YOU GOT IT CORRECT OR
10 NOT.

11 AND THAT ALSO DOES PROTECT THE INTEGRITY,
12 IN MY OPINION, IT DOESN'T GIVE OUT ANY INFORMATION. I
13 DON'T KNOW WHAT THE QUESTION WAS, ONLY THING I KNOW IS
14 WHAT I CHOOSE AS AN A, B, C, D, OR E, WITHOUT THE ACTUAL
15 ANSWER CHOICE AND ALSO THE WORDING OF IT, AND ALSO WHAT
16 THE NBME DEEMED TO BE THE CORRECT LETTER ANSWER.

17 I DON'T THINK THAT'S ASKING TOO MUCH,
18 ESPECIALLY WHEN YOU ARE --

19 THE COURT: DOCTOR, DR. KITCHENS.

20 DR. KITCHENS: I CAN MOVE ON.

21 THE COURT: SORRY TO INTERRUPT. I THINK
22 -- TELL ME IF I AM RIGHT, I THINK WHAT THE -- WHAT YOU
23 ARE CONVEYING TO ME IS AN EXPLANATION FOR WHY YOU SAID
24 WHAT YOU SAID ON THE PHONE CALL AND WHAT YOUR STATE OF
25 MIND WAS AT THE TIME?

1 DR. KITCHENS: YES, SIR, THAT'S CORRECT.

2 THE COURT: I FULLY -- I THINK FULLY
3 APPRECIATE WHAT YOU ARE TELLING ME. I GOT IT.

4 DR. KITCHENS: YES, SIR, I DIGRESS AND I
5 WILL MOVE ON THERE. AND IT IS ALREADY IN THE RECORD.

6 THE COURT: OKAY.

7 DR. KITCHENS: THANK YOU, YOUR HONOR.

8 MS. MEW: ACTUALLY, WE DIDN'T INTRODUCE
9 IT. WE JUST REFERENCED IT.

10 DR. KITCHENS: I'M SORRY, AND THEN I
11 WOULD LIKE TO HAVE THAT PUT INTO THE RECORD, PLEASE,
12 WHICH IS DX 93?

13 MS. MEW: NO OBJECTION.

14 THE COURT: ADMITTED.

15 (PLAINTIFF EXHIBIT DX 93 IS ADMITTED INTO
16 EVIDENCE.)

17 DR. KITCHENS: AND CAN WE PULL UP DX 87,
18 PLEASE?

19 SO DX 87, THIS IS JUST ALSO WE CAN SEE
20 THAT THIS IS AN E-MAIL COMING TO ME FROM THE SCHOOL WHEN
21 I ASKED FOR A SCORE RECHECK AND THIS IS THE OUTCOME THAT
22 THEY SENT TO ME. IF WE CAN SCROLL DOWN?

23 JUST FOR THE RECORD, THIS IS WHAT THE
24 LETTER LOOKS LIKE WHEN AN APPLICANT GETS THE -- THE
25 LETTER BACK. SO IT HAS THE DATE, IT SAYS "DEAR DOCTOR,"

1 IT SAYS THAT WE'VE RECHECKED IT AND THE RECHECK PROGRESS
2 CONFIRMS YOUR SCORE IS ACCURATE AS ORIGINALLY REPORTED,
3 AND THAT'S ALL IT SAYS TO IT.

4 JUST FOR YOUR HONOR TO ACTUALLY
5 APPRECIATE EXACTLY WHAT I WAS SAYING THERE, AND THAT'S
6 ALL I WOULD LIKE TO SAY AND I WOULD LIKE TO HAVE IT
7 ADMITTED INTO THE RECORD?

8 THE COURT: AND THAT WAS PX?

9 DR. KITCHENS: I'M SORRY, YOUR HONOR, D
10 AS IN DOG, X 87.

11 MS. MEW: NO OBJECTION.

12 THE COURT: ADMITTED.

13 (PLAINTIFF EXHIBIT DX87 IS ADMITTED INTO
14 EVIDENCE.)

15 DR. KITCHENS: IF WE CAN LOOK AT -- SORRY
16 -- YES, IF WE CAN LOOK AT DX 78?

17 AND THIS IS A -- THE LETTER THAT, AS WE
18 TALKED ABOUT BEFORE, ABOUT THE ACCOMMODATIONS AND THE
19 NBME REQUESTING MORE DOCUMENTATION. YOU KNOW, IN THIS
20 CASE, IT SEEMS THAT THE QUANTITY OF -- THE QUANTITY OF
21 DOCUMENTATION VERSUS THE QUALITY OF THE DOCUMENTATION
22 THAT IS GIVEN THAT WOULD BE SUFFICIENT ENOUGH TO SHOW OR
23 PROVE THAT A PERSON HAS PARTICULAR DIAGNOSES.

24 HERE, I GAVE THE INFORMATION THAT WAS
25 READILY AVAILABLE, AND NOT ONLY THAT, THROUGHOUT THIS

1 LITIGATION THE DOCUMENTS -- THERE HAS NOT BEEN A LOT OF
2 NEW DOCUMENTATION FROM BACK DURING THOSE -- THE TIMES OF
3 THOSE APPLICATIONS THERE.

4 AND AGAIN, WE ARE TALKING ABOUT QUANTITY
5 OF DOCUMENTATION. SO -- AND I THINK THIS HAS ALREADY
6 BEEN PUT INTO THE RECORD, DX 78. AND -- OH, AND SORRY,
7 CAN YOU PULL THAT BACK UP, PLEASE?

8 CAN WE GO TO BATES STAMP -- I THINK IT'S
9 NBME 263. YES. OKAY. SCROLL UP. YES, THIS IS
10 CORRECT. ALL RIGHT. YOU CAN -- YOU CAN CANCEL OUT OF
11 THAT. DX 79, PLEASE. AND BATES STAMP NBME 6 -- I MEAN,
12 SORRY, 265. SOMETIMES I CAN'T READ MY OWN HANDWRITING.

13 THIS HERE IS A -- IT'S THE LETTER THAT WE
14 TALKED ABOUT OF THE NBME ASKING ME THAT -- BASICALLY I
15 DID NOT HAVE SUFFICIENT INFORMATION, ET CETERA. I JUST
16 WANTED TO REALLY CLARIFY HERE THAT THE FRUSTRATION, THE
17 FRUSTRATION OF A PERSON THAT -- FOR MYSELF, I WAS VERY
18 FRUSTRATED HERE WITH THE NBME, AND SO WITH THAT BEING
19 SAID, I THINK IT'S VERY CLEAR THAT IF SOMEBODY SAYS, YOU
20 KNOW, RELEASE HOLD, JUST RELEASE IT, FOR MYSELF, MY
21 INTERPRETATION -- WITH EVEN NOT A PERIOD, ANY OF THOSE
22 THINGS WAS OUT OF FRUSTRATION AND ALSO, I WAS IN
23 DISBELIEF THAT THIS PARTICULAR ENTITY IS -- DID NOT
24 UNDERSTAND, YOU KNOW, BASIC DOCUMENTATION OF A PERSON
25 WHO -- OR PROOF OF A PERSON WHO HAS A DISABILITY.

1 SO -- AND AGAIN, WITH TIMING NOT BEING ON
2 MY SIDE, I JUST TOLD THEM, RELEASE THE HOLD, LET ME JUST
3 GO ON, WHICH WOULD ALSO DECREASE MY -- YOU KNOW, MY --
4 IT WOULD DECREASE MY CONFIDENCE IN THE NBME'S PROCESS,
5 WHICH DETERRED ME NOT TO REPLY ONCE AGAIN. SO WE CAN
6 TAKE THAT ONE DOWN.

7 AND I WON'T GO OVER THAT BECAUSE I THINK
8 WE ALREADY TALKED ABOUT THAT, I THINK THE JUDGE CAN
9 APPRECIATE THAT. ALL RIGHT. APPLICATION, I THINK HE
10 CAN APPRECIATE. OCTOBER 22ND. YES, SO IF YOU CAN PULL
11 UP -- ACTUALLY, I DON'T HAVE IT PULLED UP BECAUSE WE'VE
12 ALREADY WENT OVER IT, DX 81, JUST FOR THE RECORD I THINK
13 IT WAS THE -- YES, CAN YOU PULL UP DX 81, SWEETHEART?

14 I'M SORRY, AMELIA.

15 AND JUDGE, I PROMISE I AM ALMOST
16 FINISHED.

17 ZOOM IN PLEASE. RIGHT SO WHAT THIS IS
18 HERE IS LOOKING AT THAT DATE OF WHEN I ORIGINALLY --
19 WHEN I ORIGINALLY APPLIED INTO -- AND SCROLL DOWN.

20 SO IT WASN'T JUST NECESSARILY IN -- IN
21 JANUARY, A COUPLE OF WEEKS BEFORE THE EXAM, BUT IT WAS
22 MADE CLEAR THAT THEY DID ASK FOR -- THAT THEY COULD --
23 THAT THEY WAS NOT ABLE TO OPEN UP THAT RECORD -- OPEN UP
24 THE DOCUMENT, I'M SORRY, BECAUSE IT WAS ENCRYPTED, ET
25 CETERA. SO THAT'S WHY I DID -- THEY DID DIRECT ME TO RE

1 SEND THAT INFORMATION IN THERE -- OH, SORRY, AS YOU CAN
2 SEE HERE, OCTOBER 22ND.

3 THANK YOU FOR THAT CLARIFICATION THERE.
4 AND THIS IS ALREADY IN THE RECORD, WE CAN NOW GET OFF OF
5 THAT, PLEASE, OR YOU CAN CLOSE OUT.

6
7 MS. MEW: YOUR HONOR, I JUST --
8 OBJECTION. I THINK THAT THAT TESTIMONY MISSTATES THE
9 RECORD.

10 DR. KITCHENS: CAN YOU PLEASE BRING BACK
11 UP DX 81, PLEASE, AND GO TO PAGE 2?

12 SO -- AND CAN YOU SCROLL UP A LITTLE BIT,
13 PLEASE, SO WE CAN SEE THE DATE? SCROLL UP A LITTLE
14 MORE. SO WE SAY FROM -- SCROLL UP MORE.

15 SO IT'S FROM ME, ON OCTOBER 22ND. OKAY.
16 AND IF WE CAN SCROLL DOWN?

17 2021, SORRY, OCTOBER 22ND, 2021, MY
18 LETTER TO THEM ON THAT PARTICULAR DATE REQUESTING --
19 YES, ASKING THEM TO CHANGE MY -- MY CURRENT APPLICATION
20 FOR MY EXAMINATION TO ONE WITH ACCOMMODATIONS AND THAT'S
21 WHEN I ALSO EXPLAINED, NOT THINKING I NEEDED TO DO MORE
22 BUT IN THIS PARTICULAR PART -- BUT IF WE CAN SCROLL DOWN
23 A LITTLE BIT MORE? THEY DID -- THANK YOU -- TO ALSO
24 SHOW THAT I DID ATTACH THESE DOCUMENTS HERE FROM DR.
25 KHAN, ALSO JUST A LETTER AND ALSO MEDICAL DOCUMENTATION.

1 AGAIN, THE SAME DOCUMENTS THAT I HAVE
2 SUBMITTED IN EVERY ASPECT HERE, THAT I SUBMITTED TO THEM
3 AND THEY DID INFORM ME TO SEND IN THE -- THE APPLICATION
4 AS WELL. SO I DO WANT THAT TO BE FOR THE RECORD FOR MS.
5 MEW'S PURPOSES POTENTIALLY.

6 AND NOW WE CAN MOVE OFF OF THIS. MS.
7 MEW, ARE YOU OKAY WITH THIS?

8 MS. MEW: SURE. I'LL DEAL WITH IT AT THE
9 END.

10 DR. KITCHENS: OKAY. SO FOR -- DX 62,
11 PLEASE? DX 62. SO ZOOM IN, PLEASE? YES.

12 THIS IS THE -- DX 62 IS THE DOCUMENT OF
13 -- THE CPTA FORM THAT THE NBME WOULD LIKE TO REQUEST,
14 BUT I DO WANT TO MAKE IT KNOWN THAT, YOU KNOW, EVEN WITH
15 QUESTIONING FROM YESTERDAY, THE DISCONNECT FROM REALITY
16 THAT ONE, THAT -- FROM A PERSON WHO COMES FROM NOT
17 HAVING PRIVILEGE, WHETHER FINANCIAL OR WHATNOT, THIS IS
18 SOMETHING THAT -- I THINK THE QUESTION WAS ASKED TO ME,
19 WELL, COULD YOU HAVE NOT GONE TO YOUR MEDICAL SCHOOL AND
20 HAVE THEM FILL OUT THIS -- FILL OUT THIS FORM.

21 AND I REPLIED BACK NO, I DON'T HAVE
22 \$2,500, OR AROUND THAT, FOR A PLANE TICKET TO HAVE THEM
23 AUTHENTICATE THIS PARTICULAR DOCUMENT. YOU KNOW, THIS
24 IS JUST ALSO TO SHOW EVEN MORE -- OR, TO PROVE, FOR ME,
25 THAT WHEN YOU ARE ASKING FOR MORE QUANTITY OF DOCUMENTS,

1 MORE QUANTITIES OF PAPER AND TESTS PHYSICAL SCIENTIFIC,
2 ALL OF THESE TYPE OF THINGS THAT ITS SOMETIMES JUST NOT
3 FEASIBLE FOR EITHER THE AVERAGE PERSON OR EVEN THOSE WHO
4 COME WHO ARE SUB AVERAGE WHEN IT COMES DOWN TO FINANCES
5 AND THAT MATTER THERE.

6 AND THAT'S WHAT I WOULD LIKE TO SAY FOR
7 REBUTTAL ON THAT, SO WE CAN CLOSE OUT DX 62.

8 WE TALKED ABOUT ON MY APPLICATION -- AND
9 I WON'T BRING IT UP, WHAT EXHIBIT IT IS, BUT ON THE
10 APPLICATION I WAS ASKED THAT DURING THIS -- DURING
11 LITIGATION, I WAS -- I CAME UP WITH ALL OF THESE --
12 THESE AFFIDAVITS, DECLARATIONS AND SUCH, AND I -- I CAN
13 SAY WITH CONFIDENCE THAT THIS IS NOT THINGS THAT A
14 MEDICAL STUDENT OR A RECENT MEDICAL GRADUATE WOULD EVEN
15 REALLY UNDER -- CAN APPRECIATE.

16 I KNOW, FOR MYSELF, I HAD NO IDEA WHAT A
17 DECLARATION WAS. I WOULD -- I HAD TO ASK MY WIFE OR
18 SOMEONE LIKE, WHAT IS ACTUALLY IS THAT, BECAUSE I WANTED
19 TO KNOW TO ATTACH THAT TO MY RECORD. I WOULDN'T KNOW
20 ABOUT AN AFFIDAVIT FROM MY OTHER, YOU KNOW, PREVIOUS
21 TEACHERS, OR TO EVEN THINK TO MYSELF LIKE, EVEN IF I
22 WANTED TO ASK -- TELL MY MOM THAT I WAS APPLYING FOR
23 ACCOMMODATIONS, FOR ME, I WOULD THINK THAT WELL, IF I
24 SENT A LETTER FROM MY MOM, WOULD THAT BE SUBJECTIVE OR
25 OBJECTIVE?

1 YOU KNOW, WOULD THEY ACTUALLY BELIEVE
2 THAT MY MOTHER IS GOING TO NOT UNDER OATH CAN WRITE A
3 LETTER, YOU KNOW, SAYING THAT YES, OF COURSE A MOTHER IS
4 GOING TO WANT THEIR KIDS TO SUCCEED, ESPECIALLY WHEN
5 THEY KNEW ALL THIS TIME THAT THEY'VE HAD THIS
6 DISABILITY. SO I DIDN'T REALLY THINK TO -- TO ASK MY
7 MOM TO WRITE A LETTER ON MY BEHALF THERE, WHICH IS WHY
8 THE DOCUMENTS THAT'S GONE THROUGH THIS LITIGATION WERE
9 NOT GIVEN THEN, AND NOT ONLY THAT BUT THE DOCUMENTS ALSO
10 THAT WAS GOING THROUGH THIS LITIGATION AND THAT HAD BEEN
11 SUBPOENAED BY -- BY THE DEFENDANT, THERE IS NOT REALLY
12 ANY NEW INFORMATION THAT THEY COULD HAVE GOTTEN DATING
13 BACK TO THOSE DATES VERSUS THE THINGS WITH BAPTIST
14 HEALTH OR -- YOU KNOW, WITH MY PSYCHOLOGIST AND THINGS I
15 DIDN'T EVEN KNOW THOSE PEOPLE AT THE TIME.

16 SO IT WASN'T NECESSARILY LIKE, WELL, YOU
17 HAVE ACCESSED IT NOW, WHY DIDN'T YOU HAVE ACCESS TO IT
18 THEN? WELL, WHEN YOU ARE FIRST GRADUATING FROM MEDICAL
19 SCHOOL, I CAN TELL YOU NOW, YOU ARE BROKE. AND
20 ESPECIALLY WHEN YOU DON'T HAVE A JOB MOVING FORWARD, YOU
21 ARE DEFINITELY BROKE AND FOR ME IT'S JUST A -- THANKS BE
22 TO GOD THAT -- THAT OUR LOAN DEFERMENT IS STILL IN
23 PLACE. THESE ARE THINGS THAT ARE ALWAYS WEIGHING ON A
24 PERSON WHO HAS OVER \$250,000 WORTH OF MEDICAL SCHOOL
25 DEBT.

1 SO TIME AGAIN, I WOULD NOT HAVE THOUGHT
2 TO DO THAT. SO -- AND LASTLY, IF WE CAN PULL UP --
3 LET'S GO TO DX 35? DX 35, PAGE 70. DX 35.

4 FIRST, LET'S GO TO PAGE 61 FIRST, GET A
5 LITTLE BIT OF FOUNDATION HERE. THANK YOU, SO 61,
6 PLEASE. AND YOU CAN ALWAYS TYPE IT AT THE TOP.

7 SORRY. I KNOW YOU KNOW THAT.

8 CAN YOU ZOOM IN, PLEASE? THANK YOU.
9 AND SCROLL DOWN. SO A LITTLE UP, PLEASE? I NEED TO SEE
10 THIS LETTER HERE. SO WHAT THIS IS -- STOP. WAIT.
11 NOPE. IS THIS 61? I MUST -- SCROLL UP.

12 SO FOR THE RECORD, WHILE SHE IS -- WHAT I
13 AM LOOKING FOR IS, THIS IS THE LETTER THAT -- YES. I
14 JUST SAW IT.

15 BUT THIS IS THE LETTER TALKING ABOUT --
16 UM, THE LETTER THAT UM -- MY -- MY TREATING -- UM --
17 PSYCHIATRIST -- SORRY, NOT TREATING PSYCHIATRIST, BUT
18 SHE IS A NURSE PRACTITIONER IN THE ROLE OF PSYCHIATRY,
19 AND THIS LETTER HERE SHE SAYS, TO WHOM IT MAY CONCERN,
20 ET CETERA.

21 WELL, SHE'S WROTE THIS LETTER, YOU KNOW,
22 FOR ME AND IT NEEDS TO BE -- IT NEEDS -- WEIGHT NEEDS TO
23 BE HELD HERE BECAUSE THIS IS JUST VERY MUCH SO SIMILAR
24 TO THE NOTE THAT DR. KHAN ORIGINALLY WROTE ME ON MY
25 ORIGINAL APPLICATION. IT IS NOT SUPER GREAT DETAIL. IT

1 HAS HER CONTACT INFORMATION. IT'S ON AN OFFICIAL
2 LETTERHEAD. IT HAS HER NAME. CONTACT THEM IF THEY HAVE
3 ANY TYPES OF QUESTIONS.

4 THE SAME THING DR. KHAN DID, AND THE SAME
5 THING THAT WE HEARD HIM TESTIFY BY. PRACTICING
6 PHYSICIANS FOR 20 PLUS YEARS HAVE ALSO SAID THAT THIS IS
7 A SUFFICIENT LETTER THAT WE WOULD WRITE, ESPECIALLY
8 CONSIDERING THE TIME THAT A DOCTOR HAS THROUGHOUT THE
9 DAY FOR -- TO DO THESE TYPES OF THINGS; IT'S IN AND OUT.

10 SO THIS LETTER IS TO BE APPRECIATED. BUT
11 WHEN WE GO -- IF WE CAN SCROLL DOWN UNTIL WE GET TO MY
12 RESPONSE, ON PAGE 70, HOPEFULLY IT'S PAGE 70. WAIT
13 SCROLL UP, SCROLL UP. SCROLL UP SOME MORE. KEEP GOING.
14 I THINK I SAW BLUE. STOP HERE, PLEASE. NO SCROLL DOWN
15 TO PAGE 70. NO, NO, NO. SORRY PAGE 10. SORRY, DIDN'T
16 GET MUCH SLEEP LAST NIGHT. YES. IF YOU CAN ZOOM IN,
17 PLEASE. HERE. AND SCROLL DOWN TO WHERE IT SAYS, "SPOKE
18 TO THE PATIENT AND HE SAID."

19 SO I FEEL IT IS IMPORTANT FOR ME TO SAY
20 THAT I WAS NOT TELLING MY -- MY THERAPIST -- OR, MY
21 TREATING MEDICAL PROVIDER THAT HEY, I NEED FOR YOU TO
22 GIVE ME THIS MEDICATION AND GIVE ME THIS, AND -- AND X,
23 Y, Z. NO. AS IF A PERSON IS TRYING TO GET SOME TYPE OF
24 GAIN OUT OF IT. THAT'S NOT WHAT WAS HAPPENING HERE.

25 WHAT I DID WAS -- IS BECAUSE, THROUGHOUT

1 LITIGATION, AND HEARING FROM THE OTHER SIDE SAYING THAT
2 WELL, THIS IS A SPARSE LETTER FROM A DOCTOR, YOU KNOW,
3 HIS TREATING DOCTOR, IT'S NOT ENOUGH INFORMATION, AND
4 THEN, YOU KNOW, WHEN I ORIGINALLY APPLIED AND NOW HERE
5 IS ANOTHER MEDICAL PROVIDER DOING THE EXACT SAME
6 STRUCTURE AS THAT PREVIOUS PERSON, IT WOULD BE -- IN MY
7 OPINION IT WOULD BE BENEFICIAL FOR ME TO INFORM MY -- TO
8 HAVE THAT COHERENT COMMUNICATION WITH MY MEDICAL
9 PROVIDER AND SAY HEY, THIS IS NOT ENOUGH. THIS IS NOT
10 ENOUGH QUOTE UNQUOTE DOCUMENTATION, OR DETAILS, THAT
11 THEY ARE LOOKING FOR.

12 IT HAS TO BE MORE DETAILED HERE TO MAKE
13 SURE THAT THEY UNDERSTAND WHY AND WHAT YOU WOULD BE --
14 WHAT YOU WOULD BE -- YOU WOULD RECOMMEND. AND DURING
15 THAT RECOMMENDATION, THEY HAVE TO KNOW WHAT IS EVEN
16 AVAILABLE AS AN ACCOMMODATION BECAUSE THEY DON'T KNOW
17 WHO THE NBME IS. OR WELL, THEY KNOW, BUT THEY DON'T
18 KNOW WHAT THEIR GUIDELINES ARE FOR ACCOMMODATIONS.

19 AND I WOULD LIKE FOR DX 35 TO BE ENTERED
20 INTO THE RECORD?

21 MS. MEW: I THINK IT ALREADY IS.

22 DR. KITCHENS: IS IT ALREADY IN? YES.

23 THE COURT: I COULD BE WRONG, BUT I HAVE
24 IN MY NOTES IT WAS DISCUSSED BUT NOT ADMITTED SO JUST
25 FOR THE SAKE OF IF THAT'S WHAT YOU ALL WANT, LET'S DO

1 THAT.

2 DR. KITCHENS: YES, I WOULD LIKE THAT, DX
3 35 TO BE ADMITTED INTO THE RECORD, PLEASE?

4 MS. MEW: WELL, AND JUST -- I WANT TO
5 MAKE SURE BECAUSE THAT WAS THE ONE WE ADMITTED WHEN WE
6 STARTED THE TESTIMONY. SO DO YOU ALSO HAVE -- I WANT TO
7 MAKE SURE YOU HAVE IN EVERYONE'S RECORD THAT DX 28 WAS
8 ALSO ADMITTED JUST HERE AT THE START OF TESTIMONY.

9 THE COURT: THAT I DO HAVE, YES. SORRY.

10 MS. MEW: OKAY.

11 THE COURT: BUT ANYWAY DX 35 IS ADMITTED,
12 28 AS WELL.

13 (DEFENSE EXHIBIT 35 AND 28 ARE ADMITTED
14 INTO EVIDENCE.)

15 DR. KITCHENS: OKAY. FROM -- IF WE CAN
16 SEE HERE. IF WE CAN LOOK AT PX 16, WHICH IS MY LAST
17 REDIRECT, YES. SORRY, I AM LEARNING ON THE JOB. PX 16,
18 PLEASE. TAKE YOUR TIME. WHICH IS --

19 THE COURT: MUCH LIKE MEDICINE, DR.
20 KITCHENS, LAW IS A PRACTICE SO YOU NEVER STOP LEARNING.

21 DR. KITCHENS: YES, SIR. THIS IS VERY
22 CORRECT. IF WE COULD SCROLL DOWN?

23 SO THIS IS JUST THAT -- THAT MEDICAL
24 RECORD. DID YOU SCROLL THROUGH? YES, YOU DID. OKAY,
25 SCROLL DOWN SOME MORE, PLEASE? KEEP GOING. YES, OKAY,

1 SCROLL UP.

2 WHAT I WOULD LIKE TO SAY ABOUT THIS
3 PARTICULAR DOCUMENT IS -- SCROLL UP SOME MORE, PLEASE,
4 WHERE WE SEE THE DIAGNOSES? HERE. PLEASE.

5 SO I WOULD JUST LIKE FOR IT TO BE KNOWN
6 ON THIS PARTICULAR -- SORRY, THIS IS NOT -- THIS IS NOT
7 ACTUALLY THE CORRECT DOCUMENT. SCROLL UP. SCROLL UP.
8 DON'T WORRY ABOUT IT.

9 YOUR HONOR, I HAVE NO FURTHER STATEMENTS.

10 THE COURT: OKAY. MS. MEW, DO YOU HAVE
11 ANY RECROSS?

12 MS. MEW: JUST A FEW QUESTIONS, YOUR
13 HONOR, IF WE COULD PULL UP DX 62?

14 RECROSS EXAMINATION

15 BY MS. MEW:

16 Q. THIS IS THE CERTIFICATION OF PRIOR TEST
17 ACCOMMODATIONS FORM. AND IF WE LOOK AT THIS FORM, DR.
18 KITCHENS, IT SAYS ITS TO BE COMPLETED AND SIGNED BY YOUR
19 MEDICAL SCHOOL OFFICIAL, AND THEN IF YOU SCROLL DOWN TO
20 THE BOTTOM, IN THAT BOX, IT SAYS, "E-MAIL OR FAX THE
21 COMPLETED FORM TO DISABILITY SERVICES."

22 I'M ASSUMING LUBLIN USES E-MAIL; CORRECT?

23 A. YES, LUBLIN DOES HAVE E-MAIL, BUT THAT WASN'T
24 THE QUESTION THAT WAS GIVEN TO ME. THE QUESTION WAS,
25 COULD I NOT HAVE GONE TO MY SCHOOL -- WENT OVER TO MY

1 SCHOOL AND ASKED THEM TO FILL IT OUT. AND THAT'S WHEN I
2 STATED, I CANNOT GO THERE AND IT WAS NOT CLARIFIED AFTER
3 THAT STATEMENT OF AN E-MAIL.

4 Q. SO LET'S TRY THIS AGAIN THEN, DR. KITCHENS.

5 COULD YOU HAVE E-MAILED THEM THIS FORM TO
6 A SCHOOL OFFICIAL AT THE UNIVERSITY OF LUBLIN?

7 A. UM -- I'M SURE THAT I COULD HAVE, BECAUSE I AM
8 LOOKING HERE -- I'M NOT SURE IF THIS IS A FORM THAT I
9 WOULD HAVE HAD TO SEND TO THE SCHOOL OR WOULD THE SCHOOL
10 HAVE TO DOWNLOAD IT AND E-MAIL TO YOU DIRECTLY.

11 Q. EITHER CASE, YOU COULD HAVE COMMUNICATED BY
12 E-MAIL WITH YOUR MEDICAL SCHOOL ABOUT THIS FORM, DR.
13 KITCHENS?

14 A. YES, I COULD HAVE, BUT TO REALLY APPRECIATE THIS
15 AND THE STATEMENT THAT WAS MADE THERE JUST SOLIDIFIES
16 THE DISCONNECT AND ACCESSIBILITY. BUT YES, I COULD HAVE
17 E-MAILED, ACCORDING TO WHAT YOU ARE SAYING I CAN DO,
18 FROM THIS DOCUMENT.

19 Q. AND IF WE COULD PULL UP PX 19?

20 DR. KITCHENS, AT LEAST AS OF MARCH 23,
21 2021, YOU WERE UNDER THE CARE OF DR. YIN, AND BAPTIST
22 HEALTH; CORRECT?

23 A. OF 2021?

24 Q. YES.

25 A. YES.

1 Q.

2 MS. MEW: NO FURTHER QUESTIONS.

3 THE COURT: OKAY. DR. KITCHENS, I JUST
4 HAVE A COUPLE OF QUESTIONS FOR YOU.

5 BY THE COURT:

6 Q. AND LET ME JUST SET THIS STAGE A LITTLE. THE
7 QUESTIONS ARE GOING TO BE ABOUT THE ISSUE IN THIS CASE
8 OF WHETHER YOU HAVE A MENTAL IMPAIRMENT THAT
9 SUBSTANTIALLY LIMITS YOUR ABILITY TO PERFORM ONE OR MORE
10 MAJOR LIFE ACTIVITIES RELEVANT TO TAKING THE TEST
11 COMPARED TO MOST PEOPLE.

12 AND I WANT TO MAKE THE QUESTION AS
13 PERSONAL AS POSSIBLE AND I WANT TO -- I WANT TO ASK YOU:
14 PLEASE TELL ME, FROM YOUR OWN PERSPECTIVE
15 OF DEALING WITH ADHD AND ANXIETY, HOW DO YOU PERCEIVE
16 ANY LIMITATIONS THAT MAY COME FROM ADHD AND ANXIETY WHEN
17 YOU ARE TAKING TESTS; WHICH IS TELL ME A STORY FROM YOUR
18 OWN PERSPECTIVE SO I CAN UNDERSTAND HOW IT FEELS TO YOU
19 AND AFFECTS YOU?

20 A. YES, SO WHEN -- FOR ME PERSONALLY, BECAUSE OF MY
21 DISABILITY, WHEN IT COMES OUT TO READING, IT'S HARD FOR
22 ME TO READ. AND YOU KNOW, AND IT'S ACTUALLY PRETTY
23 EMBARRASSING. EVEN NOW WHEN -- YOU KNOW, FOR MY
24 TESTIMONY, YOUR HONOR, EMBARRASSING IT WAS MADE THAT I
25 COULD DO A NARRATIVE AND I HAD TO GO OFF SCRIPT BECAUSE

1 I WOULD EITHER A, MESS UP OVER A WORD OR NOT PRONOUNCE A
2 WORD CORRECTLY AND I AM SURE -- FOR THE -- YOU KNOW, AND
3 I APOLOGIZE TO THE COURT REPORTER FOR THOSE THINGS, JUST
4 TO SHOW THAT.

5 AND NOT ONLY THAT, WHEN I HAVE SUCH A
6 LONG AMOUNT -- OR, A QUANTITY OF SECTIONS OF READING
7 THAT I HAVE TO READ, SOMETIMES I HAVE TO GO BACK AND
8 READ OVER A QUESTION SEVERAL DIFFERENT TIMES TO MAKE
9 SURE THAT I'M FULLY UNDERSTANDING WHAT THEY ARE ASKING
10 ME.

11 YOU KNOW, ON THE USMLE, FOR EXAMPLE, YOU
12 MAY HAVE -- THEY HAVE ONE QUESTION, THEY HAVE YOU -- THE
13 MAIN QUESTION AT THE VERY LAST PART OF, MAYBE, SOMETIMES
14 A TWO PARAGRAPH LONG VIGNETTE, WHICH IS A CLINICAL
15 VIGNETTE, OKAY, AND EACH ONE OF THOSE PARAGRAPHS COULD
16 BE SOMETIMES FIVE OR SIX, MAYBE EVEN SEVEN, DETAILED
17 EXAM -- OR WORDING OF THE PATIENT.

18 AND THEN IT WOULD ALSO HAVE MEDICAL LABS.
19 I MEAN, A LONG LIST OF MEDICAL LABS AND THEN YOU HAVE TO
20 ANSWER A QUESTION AND THEN YOU HAVE FIVE TO SIX,
21 SOMETIMES MORE, ANSWER CHOICES.

22 SO FOR ME, WHEN I WAS -- WHEN I AM
23 READING THE EXAM, I AM LIKE OH, MY GOSH, WHAT WAS
24 THAT -- DID I READ THIS? DID THEY SAY THIS PARTICULAR
25 THING THERE?

1 SO THEN I HAVE TO GO BACK AND REREAD IT.

2 BUT THEN NOT ONLY THE PRESSURE OF THE ANXIETY -- I MEAN,
3 FROM MY ADHD NOT TO BE ABLE TO FOCUS IN ON THAT
4 PARTICULARLY -- ON THE INFORMATIONS GIVEN TO ME, MY
5 ANXIETY IS NOW KICKING IN.

6 AND MY ANXIETY THEN MAKES ME LIKE, OKAY,
7 WAIT A SECOND, YOU'VE GOT TO WATCH YOUR TIME NOW. YOU
8 ONLY HAVE X AMOUNT OF TIME AND IF YOU DON'T MAKE IT
9 THROUGH THAT PARTICULAR BLOCK, YOUR HONOR, THE TIME
10 AUTOMATICALLY GOES OUT AND THAT BLOCK CLOSSES
11 IMMEDIATELY.

12 AND YOU CANNOT GO BACK TO THOSE QUESTIONS
13 AND SAY, IF YOU FINISH THE ENTIRE 280 QUESTIONS, BUT YET
14 YOU WANT TO GO BACK TO BLOCK ONE TO REVIEW SOME OF THOSE
15 QUESTIONS, THAT'S NOT AN OPTION TO DO.

16 SO NOW YOU ARE TRYING TO FOCUS ON THE
17 TIME AND ALSO THE STRESS OF NOT BEING ABLE TO FULLY
18 COMPREHEND WHAT IS GOING ON IN THAT PARTICULAR MOMENT --
19 ON THAT PARTICULAR QUESTION. SO FOR ME, IT REALLY DID
20 PUT ME IN A STRESSFUL SITUATION AND THEN ALSO KNOWING
21 THE OTHER PRESSURE OF -- THAT EXASPERATES THE -- MY --
22 THE ANXIETY, ESPECIALLY ON THE USMLE IS THAT, MARCUS,
23 THIS IS AN EXAM THAT DETERMINES WHETHER OR NOT YOU WILL
24 PRACTICE AND THAT PRESSURE THERE FOLLOWS YOU FOREVER.

25 AND IF YOU CAN'T DO THAT, YOU CAN'T

1 PROVIDE, YOU CAN'T PAY BACK YOUR LOANS, YOU CAN'T ANY OF
2 THESE THINGS, AND AS A 31-YEAR OLD MAN WHO HAS NOT EVEN
3 PURCHASED MY OWN HOUSE, YOU KNOW, BECAUSE I AM BROKE.

4 I JUST REALLY GRADUATED; NO JOB. THOSE
5 ARE PRESSURE. I DON'T HAVE ANY CHILDREN BECAUSE I DON'T
6 BELIEVE THAT I SHOULD TRY TO BRING CHILDREN IN THIS
7 WORLD AND I DON'T HAVE A JOB, OR I CAN'T AFFORD THEM.

8 SO THAT PRESSURE THERE, AND ESPECIALLY
9 WHEN IT ALL DEPENDS UPON THE STEP EXAMINATIONS THAT ARE
10 REQUIRED FOR ME TO GET INTO A RESIDENCY PROGRAM, YOU ARE
11 GOING INTO THAT EXAM KNOWING ALL OF THESE DIFFERENT
12 THINGS. SO IT PUTS ME IN A WHOLE DIFFERENT SITUATION
13 THERE.

14 Q. OKAY.

15 AND YOU MAY THINK THIS IS SEEMINGLY AN
16 OBVIOUS QUESTION, BUT I WANT TO HEAR YOUR COMPLETE
17 RESPONSE TO IT.

18 COULD YOU -- THE ACCOMMODATION THAT YOU
19 HAD ASKED FOR, THAT YOU SOUGHT, IS EXTRA TIME,
20 TYPICALLY. AND COULD YOU TALK TO ME ABOUT HOW HAVING
21 EXTRA TIME AFFECTS YOUR ABILITY TO PERFORM ON THESE
22 TESTS OR HAS AFFECTED YOUR ABILITY TO PERFORM ON THESE
23 KINDS OF TESTS AND HOW YOU PERCEIVE IT AS ADDRESSING THE
24 ADHD AND ANXIETY EXPERIENCE THAT YOU HAVE?

25 A. YES, YOUR HONOR.

1 SO WHAT THAT TIME WOULD DO IS IT REMOVES
2 ONE OF THOSE STRESSORS, THAT THE NBME CAN ACTUALLY
3 CONTROL. THE OTHER THINGS THAT I HAVE THAT ARE
4 PRESSURES ON ME, THEY CAN'T CONTROL THAT.

5 BUT WHAT THEY CAN CONTROL AND HELP
6 MITIGATE IS GIVING ME EXTRA TIME AND THE RELIEVING THE
7 STRESS OF, HOW MUCH TIME DO I HAVE LEFT, BECAUSE ON --
8 WHEN YOU ARE TAKING THE EXAM, YOUR HONOR, YOU HAVE A
9 CLOCK THERE AND THAT CLOCK IS TICKING DOWN AND YOU ARE
10 CONSTANTLY LOOKING AT THAT CLOCK AS IT'S GOING AND YOU
11 ARE ALSO LOOKING -- IT TELLS YOU WHAT QUESTION YOU ARE
12 OUT OF 40 QUESTIONS.

13 AND IF YOU ARE ON 20, QUESTION 20, AND
14 YOU ONLY HAVE, SAY, YOU GET I THINK IT'S 60 MINUTES PER
15 BLOCK TO DO IT, NOW YOU ARE TRYING TO CALCULATE, HOW
16 MUCH MORE TIME DO I HAVE?

17 AND THEN ALSO, SOME OF THE EXAM QUESTIONS
18 ARE MORE DETAILED THAN OTHERS AND SOME ARE MATHEMATICAL,
19 THEY ARE STATISTICAL, ALL OF THE DIFFERENT THINGS THAT
20 YOU HAVE TO ACTUALLY WORK OUT MATH PROBLEMS KNOWING THE
21 SQUARE ROOT OF DIFFERENT THING AND ACTUALLY WRITING IT
22 OUT BY HAND BECAUSE THE CALCULATOR THAT THEY GIVE YOU,
23 IT'S A DUMB CALCULATOR IS WHAT WE CALL IT, YOU KNOW,
24 IT'S JUST PLUS MINUS SUBTRACTION, THOSE TYPES OF THINGS.

25 SO ARE THINGS THAT YOU -- YOU KNOW,

1 PEOPLE THINK OH, WELL, ITS JUST ASKING ABOUT WORDS AND
2 THINGS. NO. STATISTICS, EPIDEMIOLOGY, MICRO, EVERY
3 SINGLE AREA OF TWO YEARS IN ONE EXAM.

4 SO BY GIVING THAT EXTRA TIME IT WILL
5 REMOVE THAT STRESS OFF OF ME AND IT WILL REMOVE THE
6 INDICATION OF THE CLOCK. AND NOW I CAN FOCUS ON THAT
7 QUESTION AND IF I NEEDED TO GO BACK OR IF I NEEDED TO
8 TAKE A NOTE FOR ME DURING THAT PARTICULAR QUESTION, I
9 CAN DO THAT AND I CAN FEEL COMFORTABLE TAKING NOTES AS I
10 AM GOING THROUGH THAT QUESTION SO THAT I DON'T HAVE TO
11 KEEP REREADING AND I CAN ACCURATELY, FROM THE
12 DIFFERENTIAL DIAGNOSES THAT I HAVE BEEN TRAINED TO DO,
13 FROM ALL OF THE STUDYING OVER ALL OF THESE YEARS, I CAN
14 THEN EFFECTIVELY ANSWER THE ANSWER ON MY MERITS, WHETHER
15 ITS RIGHT OR WRONG.

16 THE COURT: OKAY. THANK YOU FOR YOUR
17 PATIENCE THERE.

18 MS. MEW, DO YOU HAVE ANY FOLLOW UP TO MY
19 QUESTIONS?

20 MS. MEW: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. IN THIS CASE, DR.
22 KITCHENS, YOU MAYBE EXCUSED AS A WITNESS, BUT NOT, OF
23 COURSE, OF IN YOUR LEGAL DUTIES IN THE CASE.

24 DR. KITCHENS: YES, YOUR HONOR.

25 THE COURT: AND LET'S SEE. SO WE ARE

1 STILL -- YOUR CASE IS STILL OPEN HERE. BUT I THINK YOU
2 MIGHT BE OUT OF WITNESSES. DO YOU HAVE ANYTHING ELSE TO
3 ATTEND TO IN YOUR CASE, OR ARE YOU READY FOR MS. MEW TO
4 TAKE OVER?

5 DR. KITCHENS: I AM READY FOR MS. MEW TO
6 TAKE OVER.

7 THE COURT: OKAY. ONE QUESTION WHILE
8 YOUR CASE IS -- WHILE WE HAVE YOUR CASE AND EVERYONE WE
9 ARE ALL HERE, I GUESS IT'S MORE OF A LEGAL QUESTION IS
10 MY -- I THINK THIS IS CONSISTENT WITH WHAT WE TALKED
11 ABOUT BEFORE THE TRIAL BUT JUST TO MAKE SURE WE ARE ON
12 THE SAME PAGE, BASED ON RULE 65, WHICH COVERS
13 PRELIMINARY INJUNCTION HEARINGS, MY UNDERSTANDING IS
14 THAT, FOR EXAMPLE, THE TESTIMONY OF -- WHICH WAS LIVE
15 TESTIMONY, IF I RECALL, OF DR. BACON, THAT TESTIMONY IS
16 PART OF -- IT GETS INCORPORATED AS PART OF THE TRIAL
17 RECORD AND AS PART OF YOUR CASE IN THE TRIAL.

18 DO YOU AGREE WITH THAT, DR. KITCHENS?

19 DR. KITCHENS: YES, SIR, I DO.

20 THE COURT: WHAT ABOUT YOU, MS. MEW?

21 MS. MEW: YOUR HONOR, I -- TO BE CANDID I
22 HAD NOT LOOKED THAT UP. I WAS NOT THINKING THAT WAS AN
23 OPTION AND I WOULD NOTE TOO THE TIME TO CROSS
24 EXAMINATION AT THE P.I. HEARING WAS A LITTLE BIT LIMITED
25 BUT I WILL SAY THAT WE HAVE TAKEN DR. BACON'S DEPOSITION

1 DURING DISCOVERY AND SO AND -- AND HIS DESIGNATED
2 TESTIMONY.

3 SO IF WE CAN RESERVE, I DON'T DOUBT YOUR
4 HONOR, I DON'T DOUBT WHAT YOU ARE SAYING, BUT JUST TO
5 MAKE SURE WE ARE CLEAR AND THEN MAKE A FINAL -- SAY OUR
6 FINAL POSITION ON THAT, YOU KNOW, EVENTUALLY.
7 OBVIOUSLY, IT DOESN'T HAVE TO BE --

8 THE COURT: WELL, I WILL PULL IT TO YOU
9 THIS WAY. MY PRESUMPTION, BASED ON RULE 65 A2, IS THAT
10 THE EVIDENCE RECEIVED ON THE PRELIMINARY INJUNCTION
11 MOTION THAT WOULD BE ADMISSIBLE AT TRIAL BECOMES PART OF
12 THE TRIAL RECORD AND MAY NOT BE REPEATED AT THE TRIAL,
13 WHICH WOULD INCLUDE DR. BACON'S TESTIMONY, BUT THAT'S
14 JUST MY PRESUMPTION. IF YOU WANT TO ARGUE THAT LATER,
15 THAT'S FINE; OKAY?

16 ALL RIGHT. IN THIS CASE, WE WILL TENDER
17 THE CASE OVER TO MS. MEW, AND YOU MAY BEGIN YOUR CASE.

18 DR. KITCHENS?

19 DR. KITCHENS: YES, YOUR HONOR, IF I CAN
20 TWO SECONDS. I NEED TO RUN TO THE RESTROOM.

21 MS. MEW: CAN WE TAKE A FIVE-MINUTE BREAK
22 BECAUSE I ALSO HAVE TO CALL THE WITNESS. SHE IS NOT ON
23 LINE YET.

24 THE COURT: THAT'S GOOD. LET'S TAKE A
25 TEN-MINUTE BREAK.

1 DR. KITCHENS: PERFECT. THANK YOU, YOUR
2 HONOR.

3 (RECESS TAKEN.)

4 THE COURT: ALL RIGHT, MS. MEW.

5 MS. MEW: THANK YOU, YOUR HONOR.

6 THE NATIONAL BOARD OF MEDICAL EXAMINERS
7 CALLS ERIN CONVERY.

8 THE COURT: GOOD MORNING, MS. CONVERY.

9 THE WITNESS: GOOD MORNING.

10 THE COURT: LYNN, WOULD YOU PLEASE SWEAR
11 THE WITNESS IN.

12 (DEFENSE WITNESS, ERIN CONVERY, IS SWORN.)

13 THE REPORTER: COULD YOU PLEASE STATE AND
14 SPELL YOUR NAME FOR THE RECORD?

15 THE WITNESS: ERIN CONVERY; E-R-I-N,
16 C-O-N-V-E-R-Y.

17 THE REPORTER: THANK YOU.

18 THE COURT: ALL RIGHT. TAKE IT AWAY, MS.
19 MEW.

20 DIRECT EXAMINATION

21 BY MS. MEW:

22 Q. GOOD MORNING, MS. CONVERY.

23 A. GOOD MORNING TO YOU, HOW ARE YOU?

24 Q. I AM FINE, THANK YOU.

25 WHAT IS YOUR CURRENT POSITION?

1 A. I AM THE DIRECTOR OF DISABILITY SERVICES AT THE
2 NATIONAL BOARD OF MEDICAL EXAMINERS.

3 Q. HOW LONG HAVE YOU WORKED WITH NBME?

4 A. I HAVE BEEN WITH NBME FOR TEN AND A HALF YEARS.

5 Q. WHAT IS THE NATIONAL BOARD OF MEDICAL EXAMINERS?

6 A. THE NATIONAL BOARD OF MEDICAL EXAMINERS, OR THE
7 NBME, IS A NOT-FOR-PROFIT ORGANIZATION THAT CREATES
8 MEDICAL EXAMINATIONS AND THE LICENSING EXAM IN
9 COLLABORATION WITH THE FSMB, FOR THE USMLE, OR THE
10 UNITED STATES MEDICAL LICENSING EXAMINATION.

11 Q. WHAT IS THE MISSION OF NBME?

12 A. THE MISSION OF THE NBME IS TO PROTECT THE HEALTH
13 OF THE PUBLIC THROUGH STATE OF THE ART MEDICAL
14 ASSESSMENTS IN SHORT, IT'S A LITTLE BIT LONGER THAN
15 THAT, BUT IN SHORT.

16 Q. AND ALSO BROADLY SPEAKING, WHAT IS THE UNITED
17 STATES MEDICAL LICENSING EXAMINATION?

18 A. THE UNITED STATES MEDICAL LICENSING EXAM, OR
19 USMLE, IS A THREE STEP MEDICAL LICENSING EXAM THAT ONCE
20 PASSED ALL THREE STEPS CERTIFIES SOMEBODY TO PRACTICE
21 UNSUPERVISED MEDICINE IN THE UNITED STATES, AND CANADA.

22 Q. AND ALSO, JUST BROADLY SPEAKING, WHAT ARE THE
23 STEP EXAMINATIONS?

24 A. STEP EXAMINATIONS, STEPS ONE, TWO, AND THREE,
25 ARE TAKEN AT VARIOUS TIMES THROUGH SOMEBODY'S MEDICAL

1 JOURNEY THROUGH MEDICAL SCHOOL, OR ONCE THEY HAVE
2 GRADUATED FROM AN INTERNATIONAL SCHOOL.

3 STEP 1 IS FOCUSED ON THE BASIC SCIENCES.
4 STEP 2 IS FOCUSED ON CLINICAL KNOWLEDGE UNDER THE
5 SUPERVISED PRACTICE OF MEDICINE. AND STEP 3 IS FOCUSED
6 ON THE CLINICAL KNOWLEDGE OF MEDICINE AND THE
7 APPLICATION OF MEDICINE FOR UNSUPERVISED PRACTICE.

8 Q. MS. CONVERY, COULD YOU EXPLAIN TO ME THE GENERAL
9 PROCESS FOR REGISTERING FOR A STEP EXAM AND THEN
10 REQUESTING ACCOMMODATIONS?

11 A. SURE. IN GENERAL, YOU KNOW, EXAMINEES,
12 STUDENTS, WILL REGISTER FOR THE STEP EXAM THAT THEY ARE
13 MOST READY TO TAKE AT THAT TIME. YOU DON'T REGISTER ALL
14 -- FOR ALL THREE STEPS, USUALLY, AT ONCE UNLESS YOU ARE
15 ELIGIBLE.

16 SO YOU GO TO YOUR REGISTRATION ENTITY,
17 EITHER NBME, ECFMG, OR THE FSMB FOR STEP 3. YOU SELECT
18 THE EXAM THAT YOU ARE GOING TO APPLY FOR. YOU SELECT A
19 THREE-MONTH ELIGIBLE PERIOD IN WHERE YOU ANTICIPATE
20 TAKING THE EXAM.

21 AND IF YOU ARE GOING TO SEEK TEST
22 ACCOMMODATIONS AT THAT TIME YOU CAN SAY YES TO THE
23 QUESTION, OR THE PROMPT, WILL YOU BE SEEKING TEST
24 ACCOMMODATIONS FOR AN ADA COVERED DISABILITY?

25 WHEN YOU CHECK THE BOX FOR THAT, IT

1 PLACES YOUR SCHEDULING ON HOLD WHILE WE REVIEW YOUR
2 REQUEST FOR TEST ACCOMMODATIONS. SO ONCE YOU CHECK THAT
3 BOX AND YOU ARE ELIGIBLE FOR THE EXAM HAS BEEN VERIFIED
4 BY YOUR REGISTERING ENTITY, YOU EITHER ARE ISSUED A
5 STANDARD PERMIT OR IF YOU HAVE CHECKED THE BOX FOR TEST
6 ACCOMMODATIONS, YOUR PERMIT IS PLACED ON HOLD, AND THEN
7 YOU SUBMIT YOUR REQUEST FOR TEST ACCOMMODATIONS.

8 ONCE THE DECISION HAS BEEN MADE ON YOUR
9 REQUEST FOR TEST ACCOMMODATIONS, WE RELEASE THE HOLD ON
10 YOUR SCHEDULING PERMIT, AND IF YOU ARE APPROVED FOR TEST
11 ACCOMMODATIONS AN ACCOMMODATED PERMIT IS ISSUED TO YOU,
12 AND THEN YOU MAY SCHEDULE YOUR EXAM APPOINTMENTS.

13 Q. SO EACH REQUEST FOR ACCOMMODATIONS THAT IS
14 SUBMITTED IS SPECIFIC TO A SPECIFIC TEST REGISTRATION --
15 OR, A SPECIFIC TEST ADMINISTRATION?

16 A. CORRECT.

17 Q. WHAT ARE YOUR RESPONSIBILITIES AS DIRECTOR OF
18 DS, OF DISABILITY SERVICES?

19 A. I AM RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS
20 OF THE UNIT, INCLUDING OVERSIGHT IN THE PROVISION OF
21 TEST ACCOMMODATIONS.

22 Q. HOW MANY REQUESTS FOR ACCOMMODATIONS DID NBME
23 RECEIVE LAST YEAR?

24 A. IN 2022, WE RECEIVED APPROXIMATELY 2,500
25 REQUESTS FOR ACCOMMODATIONS.

1 Q. AND APPROXIMATELY HOW MANY OF THOSE REQUESTS
2 WERE APPROVED, IN WHOLE OR IN PART?

3 A. WE HAD AN -- ABOUT AN 84 PERCENT APPROVAL
4 PERCENTAGE.

5 Q. DOES THE NBME PROVIDE INFORMATION TO EXAMINEES
6 WHO ARE INTERESTED IN REQUESTING ACCOMMODATIONS ON THE
7 USMLE?

8 A. YES. INFORMATION ABOUT TEST ACCOMMODATIONS CAN
9 BE FOUND IN THE BULLETIN OF INFORMATION THAT ALL
10 EXAMINEES ARE REQUIRED TO READ THROUGH AND SIGN PRIOR TO
11 REGISTERING OR TAKING THE STEP EXAM.

12 AND THEN INFORMATION IS ALSO PROVIDED ON
13 OUR WEBSITE, USMLE.ORG. THERE IS A SPECIFIC LANDING
14 PAGE JUST FOR TEST ACCOMMODATION INFORMATION.

15 Q. I AM GOING TO PULL UP EXHIBIT JX 8. WE CAN JUST
16 CLICK THROUGH, I'LL ASK WHILE WE ARE CLICKING.

17 DO YOU RECOGNIZE THIS DOCUMENT?

18 A. YES. THIS LOOKS LIKE IT'S THE BULLETIN OF
19 INFORMATION.

20 Q. AND WE MIGHT HAVE STARTED CLICKING WHILE YOU
21 WERE -- BEFORE IT CAME UP. LET'S JUST GO BACK TO PAGE
22 1.

23 A. OH, OKAY.

24 Q. THERE. OKAY. YOU CAN JUST STAY ON PAGE 1 NOW.

25 IS THIS THE 2022 BULLETIN OF INFORMATION?

1 A. YES, IT IS.

2 Q. AND IS THIS INFORMATION -- WELL, HOW WOULD YOU
3 DESCRIBE THE BULLETIN OF INFORMATION?

4 A. THE BULLETIN OF INFORMATION IS A LARGE OVERVIEW
5 PACKET THAT PROVIDES EXAMINEES ALL THE INFORMATION
6 RELATED TO THE EXAM ITSELF; WHAT THE REGISTRATION
7 REQUIREMENTS ARE; WHAT TO EXPECT ON TEST DAY, EXAM
8 SECURITY, SCORING, ET CETERA.

9 MS. MEW: YOUR HONOR, NBME MOVES TO ADMIT
10 EXHIBIT JX 8 INTO EVIDENCE?

11 DR. KITCHENS: NO -- NO OBJECTIONS, YOUR
12 HONOR.

13 THE COURT: ADMITTED.

14 (DEFENSE EXHIBIT 8 IS ADMITTED INTO
15 EVIDENCE.)

16 BY MS. MEW:

17 Q. IF WE GO TO PAGE 14, OF THE BULLETIN, AND IF WE
18 LOOK -- IF YOU LOOK AT THE BOTTOM WHERE IT SAYS, "THE
19 USMLE: PURPOSE, FORMAT, AND LENGTHS"?

20 A. YES.

21 Q. AND IF WE -- AND CAN YOU TELL ME IF THE TEXT IS
22 -- LOOKS TOO SMALL ON THE SCREEN?

23 A. NO, THAT'S FINE.

24 Q. AND IF WE CLICK OVER TO PAGE 15, THERE'S A
25 CONTINUATION OF THAT. YOU CAN STAY UP.

1 ARE THESE ACCURATE DESCRIPTIONS OF STEP
2 1, STEP 2 CK, AND STEP 3 OF THE USMLE?

3 A. YES, THEY ARE.

4 Q. IF WE TURN TO PAGE 20, OF THE BULLETIN? IF WE
5 SCROLL DOWN?

6 IS THIS THE INFORMATION YOU WERE
7 REFERENCING REGARDING TESTING ACCOMMODATIONS?

8 A. YES, IT IS.

9 Q. AND DO YOU SEE THE WORDS "USMLE WEBSITE" WITH --
10 IS UNDERSCORED, IS THAT A LINK?

11 A. YES. THAT'S A LINK THAT WILL TAKE YOU TO THE
12 WEBSITE PAGE THAT I MENTIONED EARLIER.

13 Q. WE WILL PULL UP EXHIBIT DX 60?

14 IS THIS WHERE THE LINK TAKES YOU?

15 A. YES, IT IS. THIS IS THE -- THE LANDING PAGE, OR
16 THE MAIN OVERVIEW PAGE FOR TEST ACCOMMODATIONS.

17 Q. AND IF WE WILL JUST CLICK THROUGH THIS? IF YOU
18 WILL CLICK UP TO PAGE 3?

19 ARE THERE, AGAIN, VARIOUS LINKS WITHIN
20 THIS PAGE?

21 A. YES. SO UNDER EACH SECTION WHERE IT SAYS,
22 "LEARN MORE," UNDER "GUIDELINES, FORMS, AND
23 RECONSIDERATION, ." IF YOU CLICKED ON THOSE "LEARN MORE"
24 BOXES, MORE INFORMATION ABOUT EACH OF THOSE TOPIC AREAS
25 WOULD EXPAND.

1 MS. MEW: NBME MOVES TO ADMIT EXHIBIT DX
2 60 INTO EVIDENCE?

3 DR. KITCHENS: YES, I -- NO OBJECTIONS.

4 THE COURT: ADMITTED.

5 (DEFENSE EXHIBIT 60 IS ADMITTED INTO
6 EVIDENCE.)

7 BY MS. MEW:

8 Q. NOW PULL UP EXHIBIT DX 61?

9 AND I WILL JUST EXPLAIN THERE ARE A
10 NUMBER OF PAGES BECAUSE THERE ARE VARIOUS DROP DOWN.

11 MS. CONVERY, WHAT IS SHOWN IN EXHIBIT DX
12 61?

13 A. THIS IS THE LANDING PAGE FOR OUR GUIDELINES,
14 ALSO FOUND ON THE USMLE.ORG WEBSITE THAT WE WERE JUST
15 REFERRING TO. AT THE TOP HERE IS THE GENERAL GUIDELINES
16 THAT WE RECOMMEND EVERYONE FOLLOW. AND THEN AS YOU
17 CLICK THROUGH IT'S ALL -- THERE ARE SPECIFIC GUIDELINES
18 FOR VARIOUS IMPAIRMENTS THAT PEOPLE CAN REVIEW FOR MORE
19 INFORMATION ABOUT WHAT WOULD BE HELPFUL TO SUBMIT FOR A
20 SPECIFIC IMPAIRMENT.

21 MS. MEW: NBME OFFERS EXHIBIT DX 61 INTO
22 EVIDENCE?

23 DR. KITCHENS: NO OBJECTION.

24 THE COURT: ADMITTED.

25 (DEFENSE EXHIBIT 61 IS ADMITTED INTO

1 EVIDENCE.)

2 BY MS. MEW:

3 Q. GENERALLY SPEAKING, WHAT IS THE PURPOSE OF THE
4 GUIDELINES?

5 A. THE GUIDELINES ARE PROVIDED TO ALLOW ANYONE,
6 EXAMINEES, FUTURE EXAMINEES, TREATMENT PROFESSIONALS,
7 SCHOOL PERSONNEL, ET CETERA, TO REVIEW THE INFORMATION
8 THAT WOULD BE REQUIRED OR NEEDED TO SUBMIT A REQUEST FOR
9 TEST ACCOMMODATIONS AND TO HELP THEM DETERMINE WHAT THEY
10 MIGHT HAVE OR WISH TO SUBMIT FOR OUR REVIEWING
11 CONSIDERATION.

12 Q. ARE THERE ANY SPECIFIC REQUIREMENTS FOR
13 SUBMITTING REQUESTS FOR TESTING ACCOMMODATIONS?

14 A. WE DO REQUIRE -- WE ASK EXAMINEES TO SUBMIT A
15 COMPLETED REQUEST FOR TEST ACCOMMODATIONS FORM, A
16 PERSONAL STATEMENT, AND THEN A REPORT OR EVALUATION OR
17 APPROPRIATE RECORDS FROM THEIR TREATMENT PROFESSIONALS,
18 AND THEN ANY OBJECTIVE RECORDS OF IMPAIRED FUNCTIONING
19 TO SUPPORT THEIR REQUEST.

20 Q. WHAT KIND OF RECORDS OR INFORMATION -- AGAIN,
21 BROADLY SPEAKING -- COULD AN EXAMINEE SUBMIT IN SUPPORT
22 OF AN ACCOMMODATION REQUEST?

23 A. SO FOR STARTERS, THE PERSONAL STATEMENT IS
24 SOMEBODY'S OPPORTUNITY TO EXPLAIN THE NATURE, FREQUENCY,
25 ONSET OF THEIR DISABILITY. THEY CAN EXPLAIN YOU KNOW,

1 HOWEVER MUCH OR AS LITTLE AS THEY WOULD LIKE TO BUT
2 THAT'S THEIR OPPORTUNITY TO PROVIDE A DETAILED HISTORY
3 OR INFORMATION ABOUT THEIR REQUEST AND WHY THEY THINK
4 ACCOMMODATIONS ARE NECESSARY TO ACCESS THE EXAM.

5 AND THEN DIFFERENT TYPES OF EVALUATIONS
6 OR DOCUMENTATION WILL VARY, BASED ON SOMEBODY'S HISTORY
7 AND THE NATURE OF THEIR IMPAIRMENT BUT IT COULD BE
8 EVALUATIONS, IT COULD BE JOB PERFORMANCE EVALUATIONS,
9 TEACHER OR PROFESSOR, YOU KNOW, FEEDBACK FORMS, PROGRESS
10 REPORTS, IEP'S, 504 PLANS, TRANSCRIPTS AND REPORT CARDS
11 FROM PRIOR INSTITUTIONS, AND THE LIKE.

12 Q. WHAT DO YOU SEE IS THE ROLE OF THE DISABILITY
13 SERVICES SECTION?

14 A. THE DISABILITY SERVICES UNIT IS HERE TO PROVIDE
15 INFORMATION TO TEST TAKERS ABOUT THE PROCESS, TO HELP
16 THEM, KIND OF GUIDE THEM AND SHEPHERD THEM THROUGH THE
17 PROCESS WITH ANY QUESTIONS THEY MAY HAVE ALONG THE WAY.

18 WE THEN THOROUGHLY AND CAREFULLY REVIEW
19 AND CONSIDER EVERY PIECE OF DOCUMENTATION THAT SOMEBODY
20 CARES TO SUBMIT TO US. AND THEN ONCE A DECISION HAS
21 BEEN MADE, WE COMMUNICATE THAT TO THE EXAMINEES, LET
22 THEM KNOW NEXT STEPS. AND IF THERE IS ANY TYPE OF
23 APPROVED ACCOMMODATIONS THAT NEED TO BE IMPLEMENTED ON
24 TEST DAY AT THE TEST CENTER, WE WORK TO MAKE SURE THAT
25 THOSE ACCOMMODATIONS ARE PROPERLY IMPLEMENTED.

1 Q. I AM NOW GOING TO PULL UP EXHIBIT JX 7, AND WE
2 WILL JUST CLICK THROUGH THAT REAL QUICK SO YOU CAN SEE.

3 WHAT IS THIS IS DOCUMENT?

4 A. THIS IS THE 2023 TRAINING GUIDE FOR THE
5 DISABILITY SERVICES ASSESSMENT ANALYST.

6 Q. AND WHAT DO YOU USE THIS DOCUMENT FOR?

7 A. THIS IS JUST LIKE A -- A VERY HIGH-LEVEL
8 OVERVIEW DOCUMENT OR OUTLINE FOR AN NEW HIRE ON -- WHO'S
9 HIRED AS AN ANALYST TO UNDERSTAND THE PROCESS KNOW WHERE
10 TO GO TO FIND INFORMATION THAT MIGHT BE HELPFUL TO THEM.
11 THERE ARE SOME SCREEN SHOTS IN THERE OF THE SYSTEMS THAT
12 WE USE THAT THEY WILL BE LEARNING HOW TO NAVIGATE AND
13 USE AS WELL.

14 MS. MEW: NBME MOVES TO ADMIT EXHIBIT JX
15 7 INTO EVIDENCE?

16 DR. KITCHENS: NO OBJECTION.

17 THE COURT: IT'S ADMITTED. BUT IT MAY
18 HAVE BEEN ADMITTED ALREADY. BUT, EITHER WAY, IT'S
19 ADMITTED.

20 (DEFENSE EXHIBIT 7 IS ADMITTED INTO
21 EVIDENCE.)

22 BY MS. MEW:

23 Q. MS. CONVERY, DID NBME RECEIVE A REQUEST FOR
24 TESTING ACCOMMODATIONS FROM DR. MARKCUS KITCHENS?

25 A. YES, WE DID.

1 Q. AND I WILL REFERENCE PX 2, WHICH IS ALREADY IN
2 EVIDENCE, AS A COPY OF THE REQUEST.

3 WHEN DID NBME RECEIVE THIS ACCOMMODATION
4 REQUEST?

5 A. IF THIS IS THE FIRST REQUEST, AND IF YOU CAN
6 SCROLL TO THE LAST PAGE SO THAT I CAN CONFIRM THE DATE?

7 THIS IS THE FIRST REQUEST FOR STEP 1 THAT
8 WE RECEIVED FROM DR. KITCHENS, ON JANUARY 5TH, 2022.

9 Q. HOW DO YOU KNOW IT WAS RECEIVED ON JANUARY 5TH,
10 2022?

11 A. BECAUSE THAT IS THE DATE STAMP, THE TIME IT CAME
12 INTO OUR SYSTEM VIA E-MAIL, WHICH IS -- IT'S AN
13 ELECTRONIC RECORD SYSTEM, A CRN, THAT CATEGORIZES AND
14 PUT -- YOU KNOW, PUTS THINGS INTO OUR QUEUE THAT COME IN
15 VIA E-MAIL.

16 Q. IF YOU WILL HOLD ON JUST A MINUTE, MS. CONVERY.
17 I WAS GOING TO INTRODUCE AN EXHIBIT BUT I THINK IT IS
18 ALREADY IN EVIDENCE. I WANT TO MAKE SURE I DON'T WANT
19 TO DUPLICATE THINGS ON THE RECORD. JUST ONE SECOND.

20 NEVERMIND, I DON'T THINK IT IS.

21 WE WILL PULL UP X DX 69.

22 CAN YOU SEE THIS OKAY, MS. CONVERY?

23 A. YES, I CAN.

24 Q. DO YOU RECOGNIZE THIS DOCUMENT?

25 A. YES I DO.

1 Q. WHAT DOES THIS SHOW?

2 A. THIS IS OUR E-MAIL RESPONSE TO THE INITIAL
3 E-MAIL WE RECEIVED FROM DR. KITCHENS, ON JANUARY 5TH,
4 JUST LETTING HIM KNOW WE COULD NOT ACCESS THE ENCRYPTED
5 LINKS THAT HE HAD SUBMITTED ORIGINALLY.

6 Q. AND THEN AT THE TOP OF THE PAGE --

7 DR. KITCHENS: OBJECTION, YOUR HONOR.

8 OBJECTION, YOUR HONOR, OR -- I GUESS, CAN
9 YOU ZOOM IN, PLEASE, SO I CAN SEE WHAT THE DOCUMENT
10 ACTUALLY IS A LITTLE BIT MORE, PLEASE? OKAY. THANK
11 YOU.

12 I AM NOT SURE IF THAT'S THE RIGHT
13 PROTOCOL, BUT SORRY.

14 MS. MEW: THAT'S FINE.

15 BY MS. MEW:

16 Q. AND LET'S JUST BE PRECISE FOR THE RECORD, MS.
17 CONVERY.

18 SO IT'S AN E-MAIL STRING; RIGHT?

19 SO THE FIRST E-MAIL AT THE BOTTOM IS A
20 JANUARY 5, 2022, E-MAIL FROM DR. KITCHENS?

21 DR. KITCHENS: I CANNOT READ IT. I CAN'T
22 READ IT. THANK YOU.

23 BY MS. MEW:

24 Q. AND THEN IF YOU SCROLL TO THE MIDDLE.

25 THEN THERE IS A JANUARY 5TH, 2022,

1 RESPONSE TO THAT E-MAIL FROM NBME, AND WE WILL SCROLL UP
2 TO THE TOP OF THE PAGE AND THAT IS A JANUARY 5TH, 2022,
3 RESPONSE FROM DR. KITCHENS TO NBME; CORRECT?

4 A. CORRECT.

5 MS. MEW: NBME MOVES TO ADMIT EXHIBIT DX
6 69 INTO EVIDENCE?

7 DR. KITCHENS: NO OBJECTION.

8 THE COURT: ADMITTED.

9 (DEFENSE EXHIBIT 69 IS ADMITTED INTO
10 EVIDENCE.)

11 BY MS. MEW:

12 Q. IF WE GO BACK TO EXHIBIT PX 2, AND TO GO PAGE 3.

13 AND AGAIN, LET'S JUST CLICK THROUGH SO WE
14 HAVE, AGAIN, A SENSE OF WHAT THIS IS.

15 THIS IS THE FIRST REQUEST FOR TESTING
16 ACCOMMODATIONS?

17 A. IT IS.

18 Q. OH, I'M SORRY, YOU CAN JUST GO UP TO PAGE 3 NOW.

19 IN THIS REQUEST, WHICH EXAM DID DR.
20 KITCHENS SEEK ACCOMMODATIONS?

21 A. THIS WAS FOR A STEP 1 EXAM.

22 Q. AND YOU SPOKE PREVIOUSLY ABOUT THE PROCESS FOR
23 REGISTERING AND REQUESTING ACCOMMODATIONS, AND JUST
24 ORIENT US BACK:

25 DO EXAMINEES HAVE TO SUBMIT A NEW REQUEST

1 FOR EACH EXAM ADMINISTRATION WHERE THEY WANT
2 ACCOMMODATIONS?

3 A. YES, THEY DO.

4 Q. AND THEY HAVE TO BE REGISTERED FIRST?

5 A. CORRECT.

6 Q. AND WHY DO YOU REQUIRE A REQUEST FOR EACH
7 ADMINISTRATION WHERE THEY MAY BE SEEKING ACCOMMODATIONS,
8 AND FOR THEM TO BE REGISTERED?

9 A. THE REQUEST FORM CONTAINS, YOU KNOW, LANGUAGE ON
10 THE LAST PAGE AND ASKS FOR A HARD SIGNATURE AND THE
11 DATE. SO THAT AND THE DATE SO THAT SIGNALS TO US
12 SOMEBODY'S, YOU KNOW, SPECIFIC INTENTION OF REQUESTING
13 ACCOMMODATIONS FOR THAT PARTICULAR STEP EXAM.

14 THEY NEED TO BE REGISTERED IN ORDER FOR
15 TO US REVIEW THE DOCUMENTATION SO THAT WE ARE
16 PURPOSEFULLY USING OUR RESOURCES FOR PEOPLE WHO INTEND
17 TO SIT FOR THE USMLE.

18 Q. THEN WE WILL PULL UP EXHIBIT DX 70. FIRST, WE
19 WILL ZOOM OUT, AND THEN LET'S ZOOM IN. SCROLL DOWN.
20 SCROLL BACK UP.

21 WHAT IS THIS DOCUMENT?

22 A. THIS IS THE ACKNOWLEDGEMENT E-MAIL THAT
23 DISABILITY SERVICES STAFF MEMBERS SENT TO DR. KITCHENS,
24 ON JANUARY 6TH, ACKNOWLEDGING RECEIPT OF HIS REQUEST FOR
25 TEST ACCOMMODATIONS ON STEP 1, AND ASKING HIM FOR ANY

1 ADDITIONAL SUPPLEMENTAL INFORMATION.

2 Q. AND IS THIS A TRUE AND CORRECT COPY OF AN E-MAIL
3 THAT IS KEPT IN NBME'S RECORDS IN THE ORDINARY COURSE OF
4 ITS BUSINESS?

5 A. YES, IT IS.

6 MS. MEW: NBME MOVES TO ADMIT EXHIBIT 70
7 INTO EVIDENCE?

8 DR. KITCHENS: NO OBJECTIONS, YOUR HONOR.

9 THE COURT: DX 70 ADMITTED.

10 (DEFENSE EXHIBIT 70 IS ADMITTED INTO
11 EVIDENCE.)

12 BY MS. MEW:

13 Q. IF WE SCROLL DOWN I WILL TRY TO SEE IF WE CAN
14 GET ALL OF THE BULLET POINTS ON ONE PAGE.

15 WHAT ADDITIONAL DOCUMENTATION DID NBME
16 REQUEST IN THIS JANUARY 6, 2022, E-MAIL AT DX 70?

17 A. WE REQUESTED A CERTIFICATION OF PRIOR TEST
18 ACCOMMODATIONS FORM, OR A CPTA FORM.

19 WE REQUESTED ANY MCAT SCORES THAT HE MAY
20 HAVE ACCESS TO.

21 AND WE ASKED HIM FOR A COPY OF HIS CVSE,
22 OR COMPREHENSIVE BASIC SCIENCE EXAM REPORT.

23 AND THEN WE ASKED HIM FOR A COMPREHENSIVE
24 REPORT OF EVALUATION, IF HE HAS ONE, REGARDING HIS
25 DIAGNOSE OF ADHD AND ANXIETY.

1 Q. IF WE LOOK AT THE FOURTH BULLET POINT IN THE
2 LAST SENTENCE, IN THAT BULLET POINT, COULD YOU PLEASE
3 READ THAT INTO THE RECORD SLOWLY, REASONABLY SLOWLY, FOR
4 THE COURT REPORTER'S BENEFIT?

5 A. "IF YOU HAVE NOT ALREADY DONE SO, I STRONGLY
6 ENCOURAGE YOU TO REVIEW THE USMLE GUIDELINES TO REQUEST
7 TEST ACCOMMODATIONS, WHICH INCLUDES SPECIFIC GUIDELINES
8 FOR REQUESTING ON THE BASIS OF ADHD, AND PAGE 1 OF THE
9 USMLE REQUEST FOR TEST ACCOMMODATIONS FORM FOR
10 INFORMATION ON HOW TO DOCUMENT A FUNCTIONAL IMPAIRMENT."

11 Q. DID DR. KITCHENS PROVIDE ANY ADDITIONAL
12 DOCUMENTS IN RESPONSE TO THIS REQUEST?

13 A. I BELIEVE HE -- EXCUSE ME -- SUBMITTED HIS CVSE
14 SCORE REPORT.

15 Q. AND WHY DID YOU ASK FOR THE CVSE SCORE REPORT?

16 A. BECAUSE DR. KITCHENS HAD PROVIDED AN E-MAIL
17 CORRESPONDENCE WITH HIS CVSE SCHEDULING CONFIRMATION
18 FROM PROMETRIC.

19 Q. AND IF WE CAN PULL UP EXHIBIT PX 52?

20 THIS IS ALREADY IN THE RECORD BUT JUST SO
21 IT'S CLEAR, THIS IS THE CVS SCORE REPORT -- A COPY OF
22 THE CVSE REPORT THAT DR. KITCHENS PROVIDED TO NBME?

23 A. (NO AUDIBLE RESPONSE.)

24 Q. DID YOU SAY YES? I JUST DIDN'T HEAR YOU.

25 A. OH, I'M SORRY, YES. CORRECT. I AM LOSING MY

1 VOICE.

2 Q. DID DR. KITCHENS PROVIDE ANY OTHER DOCUMENTATION
3 IN RESPONSE TO IN NBME'S COMMUNICATION?

4 A. NO, HE DID NOT.

5 Q. NEXT WE WILL LOOK AT EXHIBIT DX 62.

6 WHAT IS THIS DOCUMENT?

7 A. THIS IS THE CERTIFICATION OF PRIOR TEST
8 ACCOMMODATIONS FORM THAT WE ASK MEDICAL SCHOOLS TO FILL
9 OUT IF THEY HAVE PROVIDED ACCOMMODATIONS TO THEIR
10 STUDENT.

11 Q. AND IS THIS A TRUE AND CORRECT COPY OF THE CPTA
12 FORM THAT NBME USES IN THE ORDINARY COURSE OF ITS
13 BUSINESS?

14 A. YES, IT IS.

15 MS. MEW: NBME MOVES TO ADMIT EXHIBIT DX
16 62?

17 DR. KITCHENS: NO OBJECTIONS.

18 THE COURT: ADMITTED.

19 (DEFENSE EXHIBIT 62 IS ADMITTED INTO
20 EVIDENCE.)

21 BY MS. MEW:

22 Q. WHAT INFORMATION IS SOUGHT IN THIS FORM?

23 A. THIS IS A FORM WHERE WE ASK THE MEDICAL SCHOOL
24 REPRESENTATIVE TO IDENTIFY THE STUDENT THAT THEY ARE
25 FILLING THE FORM OUT FOR, WHAT TYPES OF ACCOMMODATIONS

1 THEY PROVIDED TO THAT STUDENT, WHEN THEY BEGAN, AND THE
2 REASON FOR PROVIDING THE ACCOMMODATIONS.

3 Q. HAS NBME RECEIVED CPTA'S FILLED OUT BY FOREIGN
4 MEDICAL SCHOOLS?

5 A. YES, WE HAVE.

6 Q. CAN THE FORMS BE SUBMITTED BY E-MAIL?

7 A. YES, THEY CAN.

8 Q. NOW I AM NOW GOING TO PULL UP EXHIBIT PX 3.

9 I WILL REPRESENT TO YOU THAT THIS HAS
10 ALREADY BEEN ADMITTED INTO THE RECORD AS A COPY OF DR.
11 KITCHENS'S SECOND ACCOMMODATION REQUEST TO NBME.

12 A. THAT'S CORRECT.

13 Q. IF WE TURN TO PAGE 3, OF THIS DOCUMENT?

14 WHAT ACCOMMODATIONS ARE -- IS DR.
15 KITCHENS REQUESTING IN THIS REQUEST?

16 A. FOR STEP 1, AND FOR TIME AND A HALF, AND
17 ADDITIONAL BREAK TIME OVER TWO DAYS.

18 Q. DID DR. KITCHENS EVER REQUEST ACCOMMODATIONS ON
19 ANY ADMINISTRATION OF THE STEP 2 CK EXAM?

20 A. NO, HE DID NOT.

21 Q. DID DR. KITCHENS EVER REQUEST ACCOMMODATIONS ON
22 THE MAY 9TH, 2022, ADMINISTRATION OF THE STEP 1 EXAM?

23 A. NO, HE DID NOT.

24 Q. LET'S NOW TURN TO EXHIBIT DX 75.

25 AND WE WILL DO A CLICK THROUGH FIRST AND

1 THEN WE CAN -- THEN WE WILL DO -- FOR THE RECORD, DX 75
2 SHOWS AT THE TOP IT'S FROM DISABILITYSERVICES@NBME.ORG.
3 IT'S AN E-MAIL DATED AUGUST 30TH, 2022, TO DR. KITCHENS.

4 CAN YOU EXPLAIN WHAT THAT THIS DOCUMENT
5 IS, MS. CONVERY?

6 A. THIS IS ANOTHER ACKNOWLEDGEMENT E-MAIL FROM OUR
7 STAFF, LETTING DR. KITCHENS KNOW THAT WE RECEIVED HIS
8 REQUEST FOR STEP 1, AND ALSO ASKING HIM FOR -- TO
9 PROVIDE NEW SUBSTANTIVE DOCUMENTATION TO SUPPORT THIS
10 REQUEST; DOCUMENTATION THAT WE HAD NOT PREVIOUSLY
11 REVIEWED WHEN MAKING A DECISION ABOUT HIS REQUEST FOR
12 ACCOMMODATIONS PREVIOUSLY.

13 Q. AND IS THIS TRUE AND CORRECT COPY OF AN E-MAIL
14 THAT NBME MAINTAINS -- NBME CREATED AND MAINTAINS IN THE
15 ORDINARY COURSE OF ITS BUSINESS?

16 A. YES, IT IS.

17 MS. MEW: NBME MOVES TO ADMIT EXHIBIT DX
18 75 INTO EVIDENCE?

19 DR. KITCHENS: NO OBJECTION.

20 THE COURT: ADMITTED.

21 (DEFENSE EXHIBIT 75 IS ADMITTED INTO
22 EVIDENCE.)

23 BY MS. MEW:

24 Q. SO IF WE GO TO -- WE ARE GOING TO GO TO THE
25 MIDDLE OF THE PAGE HERE. I AM A LITTLE HESITANT TO DO

1 THIS BUT IF YOU CAN, CAN YOU READ INTO THE RECORD WHAT
2 IT STATES IN THAT FIRST BULLET POINT UNDER, "BEFORE WE
3 CAN BEGIN TO PROCESS YOUR REQUEST YOU MUST DO THE
4 FOLLOWING"?

5 A. SURE. IT SAYS, "PLEASE PROVIDE NEW," AND THEN
6 IN PARENTHESIS, "(DOCUMENTATION THAT WE HAVE NOT ALREADY
7 REVIEWED), CLOSE PARENS, "SUBSTANTIVE DOCUMENTATION TO
8 SUPPORT YOUR REQUEST FOR ADDITIONAL TESTING TIME, TIME
9 AND A HALF, AND ADDITION BREAK TIME. THE DOCUMENTATION
10 THAT WAS SUBMITTED WAS DOCUMENTATION WE HAD REVIEWED
11 PREVIOUSLY."

12 "ULTIMATELY, IT IS UP TO EACH EXAMINEE TO
13 DETERMINE WHAT DOCUMENTATION THEY HAVE AVAILABLE AND
14 WOULD LIKE TO SUBMIT FOR OUR REVIEW. GENERALLY, THE
15 MORE INFORMATION THAT WE HAVE, THE MORE INFORMED
16 DECISION WE CAN MAKE."

17 "PLEASE FEEL FREE TO SHARE YOUR PREVIOUS
18 DECISION LETTER WITH YOUR TREATMENT PROVIDERS OR OTHERS
19 IF YOU FEEL THEY MAY BE ABLE TO ASSIST YOU IN OBTAINING
20 ADDITIONAL SUPPORTING INFORMATION."

21 Q. DID DR. KITCHENS PROVIDE ANY ADDITIONAL
22 DOCUMENTATION IN RESPONSE TO THIS SUGGESTION?

23 A. NO.

24 Q. AND NOW I WILL TURN TO EXHIBIT DX 76. JUST TO
25 IDENTIFY THE DOCUMENT FOR THE RECORD, THIS IS ANOTHER

1 E-MAIL STRING.

2 IF WE SCROLL DOWN TO THE -- THE FIRST
3 E-MAIL IS AN AUGUST 30TH, 2022, E-MAIL FROM DISABILITY
4 SERVICES. I THINK IT IS THE ONE THAT WE JUST
5 REFERENCED. AND WHEN YOU SCROLL UP THERE'S AN
6 AUGUST 30TH, 2022, RESPONSE FROM DR. KITCHENS, AND THEN
7 AN AUGUST 30TH, 2022, RESPONSE TO DR. KITCHENS, FROM
8 DISABILITY SERVICES.

9 MS. CONVERY, IS DX 76 A TRUE AND CORRECT
10 COPY OF AN E-MAIL RECORD THAT WAS CREATED AND MAINTAINED
11 IN NBME'S ORDINARY COURSE OF BUSINESS?

12 A. YES, IT IS.

13 MS. MEW: NBME MOVES TO ADMIT DX 76 INTO
14 THE RECORD?

15 DR. KITCHENS: NO OBJECTION.

16 THE COURT: ADMITTED.

17 (DEFENSE EXHIBIT 76 IS ADMITTED INTO
18 EVIDENCE.)

19 BY MS. MEW:

20 Q. MS. CONVERY, CAN YOU EXPLAIN WHAT THIS STRING OF
21 COMMUNICATIONS IS?

22 A. THIS IS A REPLY THREAD TO OUR ACKNOWLEDGEMENT
23 E-MAIL THAT WE PREVIOUSLY LOOKED AT, AND THIS IS DR.
24 KITCHENS REPLYING THAT HE ACKNOWLEDGES HE HAS NO NEW
25 DOCUMENTATION.

1 Q. I AM NOW GOING TO PULL UP DX 78. JUST FOR THE
2 RECORD, DX 78 IS A SEPTEMBER 2ND, 2022, E-MAIL FROM
3 DISABILITY SERVICES TO DR. KITCHENS.

4 MS. CONVERY, CAN YOU JUST EXPLAIN WHAT
5 THIS DOCUMENT IS?

6 A. THIS IS AN E-MAIL -- THIS IS AN E-MAIL TO DR.
7 KITCHENS FROM DR. LUCIA MCGEEHAN, THE MANAGER OF
8 EXAMINEE ACCOMMODATIONS IN DISABILITY SERVICES, JUST
9 REITERATING THAT WE NEED NEW SUBSTANTIVE DOCUMENTATION
10 TO SUPPORT HIS NEWEST REQUEST FOR STEP 1.

11 AND IF HE DOESN'T HAVE ADDITIONAL
12 DOCUMENTATION TO SUBMIT, HE CAN ELECT TO HAVE HIS HOLD
13 RELEASED FOR A STANDARD EXAM TIME PERMIT.

14 Q. AND THEN I WILL PULL UP EXHIBIT DX 79.

15 THIS DOCUMENT IS ALSO ALREADY IN
16 EVIDENCE, BUT CAN YOU EXPLAIN WHAT THIS DOCUMENT SHOWS
17 FOCUSING ON THE SEPTEMBER 7TH, 2022, E-MAIL FROM DR.
18 KITCHENS?

19 A. THIS IS A RELY TO THAT E-MAIL FROM DOCTOR
20 MCGEEHAN, FROM DR. KITCHENS, WHICH STATES, "RELEASE
21 HOLD."

22 Q. AND WHAT WOULD HAPPEN THEN AFTER SOMEONE --
23 AFTER AN EXAMINEE TELLS YOU TO RELEASE THE HOLD?

24 A. WE WOULD RELEASE THE HOLD ON THEIR SCHEDULING
25 PERMIT SO THAT THEY GET A STANDARD TIME EXAMINATION

1 PERMIT TO SCHEDULE WITH. AND WE WOULD CLOSE THEIR FILE
2 FOR THE REQUEST FOR TEST ACCOMMODATIONS AT THAT TIME.

3 Q. JUST ONE LAST QUESTION, MS. CONVERY:

4 WERE YOU ASKED TO CHECK NBME DATA TO SEE
5 IF JOANNE SENOGA EVER REQUESTED AN ACCOMMODATIONS ON ANY
6 USMLE EXAM?

7 A. YES, I WAS.

8 Q. AND WHAT DID NBME DATA SHOW?

9 A. THAT WE NEVER RECEIVED A REQUEST FROM THAT
10 INDIVIDUAL.

11 MS. MEW: I DO NOT HAVE ANY OTHER
12 QUESTIONS.

13 THE COURT: OKAY. DR. KITCHENS?

14 DR. KITCHENS: THANK YOU, YOUR HONOR.

15 CROSS-EXAMINATION

16 BY DR. KITCHENS:

17 Q. GOOD MORNING MS. CONVERY. HOW ARE YOU?

18 A. GOOD MORNING, DR. KITCHENS. I AM WELL.

19 HOW ARE YOU?

20 Q. I AM DOING WELL MYSELF, THANK YOU.

21 MS. CONVERY, HAVE YOU EVER TESTIFIED ON
22 BEHALF OF NBME BEFORE TODAY?

23 A. BEFORE TODAY? JUST SEVERAL WEEKS AGO IN YOUR
24 EMERGENCY INJUNCTION HEARING.

25 Q. AND BEFORE THEN, HOW MANY TIMES HAVE YOU

1 TESTIFIED ON BEHALF OF THE NBME?

2 A. I HAVE NOT BEFORE THEN.

3 Q. AND MS. CONVERY, YOU ARE -- YOU HAVE BEEN THE
4 DIRECTOR OF DISABILITY SERVICES AT THE NBME SINCE MARCH,
5 2022, CORRECT?

6 A. THE VERY END OF MARCH, 2022, CORRECT.

7 Q. AND AS THE DIRECTOR, YOU DO NOT REVIEW
8 INDIVIDUAL'S APPLICATIONS FOR ACCOMMODATIONS; CORRECT?

9 A. THAT'S CORRECT.

10 Q. BEFORE THAT, YOU WERE A SENIOR DISABILITY
11 SPECIALIST AT THE NBME; CORRECT?

12 A. BEFORE THAT I WAS ACTUALLY THE MANAGER OF THE
13 UNIT.

14 Q. YOU WERE THE MANAGER OF THE UNIT, AND BEFORE
15 THAT WHAT WAS YOUR POSITION?

16 A. BEFORE THE MANAGER I WAS A SENIOR DISABILITY
17 SERVICES SPECIALIST.

18 Q. SO THE NBME DOESN'T REQUIRE SENIOR DISABILITY
19 SERVICES SPECIALISTS TO HAVE ANY CLINICAL MEDICAL
20 KNOWLEDGE; CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND THE NBME DOES NOT REQUIRE DISABILITY SERVICE
23 SPECIALISTS TO HAVE ANY MEDICAL KNOWLEDGE; CORRECT?

24 A. CORRECT.

25 Q. AND THE NBME DOES NOT REQUIRE DISABILITY

1 SERVICES EXPERTS TO HAVE MEDICAL KNOWLEDGE; CORRECT?

2 A. CAN YOU CLARIFY BY WHAT YOU MEAN BY EXPERTS?

3 Q. YES. THOSE WHO -- SO THE NBME DOES NOT REQUIRE
4 DISABILITY SERVICES EXPERTS WITH PH.D.'S TO HAVE
5 CLINICAL MEDICAL KNOWLEDGE?

6 A. ARE YOU REFERRING TO OUR ASSESSMENT ANALYSTS,
7 LIKE OUR IN-HOUSE STAFF OR?

8 Q. NO, I'M -- MY QUESTION IS:

9 DOES NBME REQUIRE THOSE IN DISABILITY
10 SERVICES WHO HAVE A PH.D. TO HAVE CLINICAL EXPERIENCE OR
11 -- YES, CLINICAL EXPERIENCE?

12 A. WELL, THE -- THOSE WITH THEIR PH.D.'S HAVE
13 EXPERIENCE IN THEIR RELATED FIELD SO THAT COULD BE IN A
14 CLINICAL CONTEXT, ESPECIALLY FOR OUR NEUROPSYCHOLOGISTS.

15 Q. WELL, ACTUALLY THAT'S NOT -- SO SPECIFICALLY --
16 SO THERE IS A DIFFERENCE BETWEEN CLINICAL AND HAVING A
17 PH.D. AND NEVER PRACTICING WITH IT; RIGHT? SO MY
18 QUESTION -- MY QUESTION IS:

19 DO THEY REQUIRE THE PEOPLE WHO HAVE THEIR
20 PH.D.'S IN YOUR DEPARTMENT TO HAVE CLINICAL MEDICAL
21 EXPERIENCE?

22 A. WE REQUIRE THOSE FOLKS TO HAVE EXPERIENCE IN
23 THEIR FIELD. SO IF THEY HAVE BEEN REQUIRED TO HAVE
24 CLINICAL EXPOSURE AND ENCOUNTER IN THE PROCESS OF
25 GETTING THEIR DOCTORATE, THAT IS A REQUIREMENT. THEY

1 NEED TO HAVE THEIR DOCTORATE AND THEIR EXPERIENCE.

2 Q. SO --

3 A. LEADING UP TO THAT. SO IF YOU ARE ASKING FOR DO
4 THEY HAVE DIRECT PATIENT -- IS IT A REQUIREMENT FOR THEM
5 TO HAVE DIRECT PATIENT INTERACTION?

6 Q. NO, THAT'S NOT MY QUESTION. I THINK ITS SAFE TO
7 SAY THAT ITS NOT A REQUIREMENT IN THE MANUAL THAT THEY
8 HAVE TO HAVE A CLINICAL EXPERIENCE?

9 MS. MEW: OBJECTION, I THINK THAT
10 MISCHARACTERIZES.

11 THE COURT: WELL, NO, I THINK THAT DR.
12 KITCHENS HAS NOT GOTTEN THE ANSWER THAT HE IS ENTITLED
13 TO HERE. I THOUGHT I HEARD THAT THE ANSWER IS NO, NOT
14 EXPRESSLY BUT COULD THE -- MAYBE, MS. CONVERY, YOU COULD
15 -- MAYBE, DR. KITCHENS, REPHRASE THE QUESTION.

16 DR. KITCHENS: OKAY.

17 BY DR. KITCHENS:

18 Q. NBME DOES NOT REQUIRE FOR A PERSON IN DISABILITY
19 SERVICES TO HAVE -- WHO HAVE A PH.D., SO THEY ARE A
20 DOCTOR, TO HAVE CLINICAL MEDICAL EXPERIENCE?

21 A. I'M GOING TO SAY NO, BUT I MEAN, I GUESS I WOULD
22 ASK YOU TO CLARIFY WHEN YOU SAY MEDICAL EXPERIENCE.

23 Q. OKAY. SO -- OKAY. I THINK I GOT WHAT I NEED
24 FROM HERE. I WILL MOVE ON HERE.

25 SO PRIOR TO WORKING AT THE NBME, YOU WERE

1 A BENEFITS ADMINISTRATOR, FOR LILY PULITZER; IS THAT
2 CORRECT?

3 A. YES.

4 Q. AND SO TO CLARIFY, YOU WERE A BENEFITS
5 ADMINISTRATOR MANAGING EMPLOYEE'S BENEFITS WITHIN A
6 COMPANY; CORRECT?

7 A. CORRECT.

8 Q. SO ISN'T -- SO ISN'T IT TRUE THAT THE NBME IS
9 THE ONLY PLACE THAT YOU HAVE DONE DISABILITY
10 APPLICATIONS?

11 A. YES.

12 Q. AND MS. CONVERY, YOU HAVE A BACHELOR'S DEGREE IN
13 PSYCHOLOGY; CORRECT?

14 A. YES, I DO.

15 Q. AND A MASTER'S -- AND WHAT IS YOUR MASTER'S
16 DEGREE IN?

17 A. IN PUBLIC ADMINISTRATION.

18 Q. PUBLIC ADMINISTRATION. SO A MASTER'S IN PUBLIC
19 ADMINISTRATION DOES NOT ALLOW YOU TO TREAT PATIENTS;
20 CORRECT?

21 A. CORRECT.

22 Q. AND YOU WERE -- YOU HAVE NOT -- YOU ARE NOT ABLE
23 TO DO CLINICAL WORK AT ALL WITH THIS PARTICULAR DEGREE
24 THAT YOU HAVE; CORRECT?

25 A. CORRECT.

1 Q. SO I WOULD LIKE TO ASK YOU NOW:

2 ARE YOU FAMILIAR WITH THE ADA?

3 A. YES, I AM.

4 Q. AND THE ADA DEFINES A DISABILITY AS A MENTAL OR
5 PHYSICAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR
6 MORE MAJOR LIFE ACTIVITIES; CORRECT?

7 A. CORRECT.

8 Q. AND THE ADA BREAKS DOWN THAT -- THAT DEFINITION;
9 CORRECT?

10 A. IN THE -- YES.

11 Q. AND ISN'T IT TRUE THAT THE ADA RECOGNIZES ADHD
12 AS A MENTAL IMPAIRMENT?

13 A. GENERALLY SPEAKING, YES.

14 Q. I WILL TELL YOU THAT THE -- THE ANSWER IS YES
15 THERE.

16 WOULD YOU AGREE THAT CONCENTRATING
17 THINKING AND READING ARE MAJOR LIFE ACTIVITIES UNDER THE
18 ADA?

19 MS. MEW: OBJECTION, YOUR HONOR. I MEAN,
20 JUST -- YOU CAN ANSWER IF YOU KNOW, MS. CONVERY, BUT SHE
21 IS OBVIOUSLY NOT A LAWYER.

22 DR. KITCHENS: NO, SHE IS THE DIRECTOR OF
23 DISABILITY SERVICES. THIS IS PART OF HER JOB DUTIES.

24 THE COURT: I'M GOING TO -- MY
25 UNDERSTANDING OF THE OBJECTION, DR. KITCHENS, WAS THAT

1 THE -- THIS WITNESS IS NOT EXPECTED TO HAVE -- TO BE
2 ABLE TO MAKE LEGAL CONCLUSIONS, BUT I THINK I UNDERSTAND
3 THE PURPOSE OF YOUR LINE OF QUESTIONING, SO I WILL GIVE
4 YOU SOME LEEWAY.

5 DR. KITCHENS: THANK YOU, YOUR HONOR.
6 BY DR. KITCHENS:

7 Q. MS. CONVERY, AS THE DIRECTOR OF DISABILITY
8 SERVICES, WHO OVERSEE OTHER PEOPLE WHO ARE SUPPOSED TO
9 EVALUATE THOSE WITH DISABILITY APPLICATIONS, WOULD YOU
10 CONSIDER CONCENTRATION AND THINKING ARE EXECUTIVE
11 FUNCTIONS?

12 A. UH --

13 Q. I WILL REPHRASE MY QUESTION. I WILL REPHRASE MY
14 QUESTION.

15 UNDER THE ADA, ISN'T IT TRUE THAT
16 CONCENTRATION AND THINKING ARE EXECUTIVE FUNCTIONS?

17 A. I AM NOT -- AGAIN, FOR THE RECORD, I AM NOT A
18 LAWYER BUT UNDER THE ADA I DON'T THINK THEY SPECIFICALLY
19 CLAIM THAT AS AN EXECUTIVE FUNCTION, BUT THINKING AND
20 CONCENTRATING, I'M NOT SURE THE DIRECT QUESTION, OTHER
21 THAN IF IT'S PART OF THE EXECUTIVE FUNCTIONING SKILLS,
22 WHICH I DON'T BELIEVE THE ADA SPECIFICALLY STATES AS AN
23 EXECUTIVE FUNCTIONING SKILL.

24 Q. I WILL TELL THAT YOU IT DOES.

25 MS. MEW: OBJECTION, YOUR HONOR.

1 DR. KITCHENS: AM I NOT --

2 THE COURT: DR. KITCHENS, PART OF YOUR
3 CROSS YOU DON'T -- YOU SHOULD NOT TESTIFY AS PART OF
4 YOUR CROSS OR ARGUE. YOU SHOULD JUST ASK QUESTIONS AND
5 YOU KNOW, I WILL -- IF YOU ASK A QUESTION AND IT'S A
6 FAIR QUESTION I WILL MAKE SURE YOU GET YOUR ANSWERS. SO
7 GO AHEAD.

8 DR. KITCHENS: SORRY, YOUR HONOR.

9 BY DR. KITCHENS:

10 Q. WOULD YOU SAY THAT CONCENTRATION AND THINKING
11 ARE KEY COMPONENTS NEEDED WHEN TAKING A HIGH STAKES
12 EXAMINATION SUCH AS THE USMLE?

13 A. SURE, YES.

14 Q. SO I GATHER HERE -- IN YOUR POSITION AS
15 DIRECTOR, AND FROM YOUR TESTIMONY EARLIER, ISN'T IT TRUE
16 THAT YOU DON'T FULLY UNDERSTAND THE RULES OF THE ADA?

17 MS. MEW: YOUR HONOR, OBJECTION. AND
18 JUST TO THE FOUNDATION, AS A FOUNDATIONAL POINT, I
19 BELIEVE MS. CONVERY TESTIFIED SHE IS NOT THE ONE
20 DECIDING THE ACCOMMODATION REQUESTS SO I'M NOT ENTIRELY
21 SURE WHERE THIS IS GOING.

22 DR. KITCHENS: YOUR HONOR --

23 THE COURT: HOLD ON. THE OBJECTION IS
24 OVERRULED. MS. CONVERY, YOU CAN ANSWER.

25 THE WITNESS: WELL, CAN YOU PLEASE REPEAT

1 YOUR QUESTION, DR. KITCHENS?

2 BY DR. KITCHENS:

3 Q. YES. MY QUESTION TO YOU IS:

4 IS IT -- ISN'T IT TRUE THAT YOU DO NOT
5 FULLY UNDERSTAND THE RULES OF THE ADA?

6 A. WHILE I AM NOT AN ATTORNEY, I HAVE A GENERAL
7 UNDERSTANDING OF THE ADA.

8 Q. AND AS THE DIRECTOR OF DISABILITY SERVICES WHO
9 OVER -- YOU OVERSEE OTHER PEOPLE THAT IS UNDER YOU;
10 CORRECT?

11 A. THAT'S CORRECT.

12 Q. THOSE PEOPLE WHO -- THAT ARE UNDER YOU, THEY
13 REVIEW APPLICANTS FOR -- FOR ACCOMMODATIONS
14 APPLICATIONS; CORRECT?

15 A. CORRECT.

16 Q. AND WHEN THEY REVIEWING THESE APPLICATIONS THEY
17 HAVE A CHECKLIST THAT THEY HAVE TO COMPLETE BEFORE THEY
18 CAN MOVE ONTO CERTAIN STAGES; CORRECT?

19 A. I WOULDN'T -- I WOULDN'T NECESSARILY DESCRIBE IT
20 AS A CHECKLIST. CAN YOU SAY MORE ABOUT WHAT YOU MEAN
21 ABOUT A CHECKLIST?

22 Q. SURE. SO IN TRAINING, WHEN YOU HAVE -- WHEN YOU
23 HAVE NEW PEOPLE, I GUESS YOU COULD SAY, OR JUST THE
24 GUIDELINES, DO YOU GUYS HAVE SPECIFIC GUIDELINES OR FLOW
25 CHARTS THAT YOU MIGHT USE TO HELP A PERSON MAKE A GOOD

1 DECISION -- OR A -- THE BEST DECISION FOR THOSE WHO ARE
2 APPLYING FOR ACCOMMODATIONS?

3 A. SO WE DO HAVE A FLOW CHART OF THE GENERAL
4 OVERALL PROCESS FLOW, MEANING RIGHT -- LIKE HIGH LEVEL,
5 LIKE IS SOMEBODY REGISTERED, DO WE NEED TO SEEK
6 ADDITIONAL INFORMATION FROM THEM, YES OR NO. AND THEN
7 BASED ON THOSE YES OR NO WILL DECIDE HOW THE PROCESS
8 FLOWS.

9 BUT AS FAR AS MAKING A DECISION, EVERY --
10 EVERY PIECE OF DOCUMENTATION IS THOROUGHLY REVIEWED AND
11 CONSIDERED AND THEN THE DECISION RENDERED BASED ON THAT
12 THOROUGH AND CAREFUL REVIEW PROCESS.

13 Q. SO -- SO ISN'T IT TRUE THAT THE NBME, BY THIS
14 GUIDELINE, YOU DEPEND HEAVILY ON THE -- ON THE
15 DOCUMENTATION THAT YOU RECEIVE?

16 A. CORRECT.

17 Q. AND IF THAT PERSON DOES NOT HAVE ENOUGH
18 DOCUMENTATION THEY DO NOT MOVE FORWARD IN THE PROCESS OF
19 ACCOMMODATIONS; CORRECT?

20 A. NO, IT'S NOT THAT THEY DON'T MOVE FORWARD IN THE
21 PROCESS. WE HAVE TO MAKE A DECISION BASED ON THE
22 DOCUMENTATION THAT WE HAVE RECEIVED.

23 Q. GOT YOU. SO IF -- AND FOR UNDERSTANDING, ARE
24 YOU SAYING THAT IF THEY BY THIS FLOW CHART OR WHATEVER
25 GUIDELINES THAT YOU HAVE, THAT IF -- IF THEY CANNOT GO

1 FORWARD ANY MORE YOU MAKE A DECISION AT THAT POINT?

2 A. WELL, WE MAKE A DECISION BASED ON WHATEVER
3 DOCUMENTATION WE HAVE TO MAKE A DECISION BASED ON.

4 Q. AND WHAT PROTOCOLS DO YOU HAVE IN PLACE THAT IF
5 A PERSON -- IF AN APPLICANT -- SORRY, IF A PERSON
6 APPLYING FOR ACCOMMODATIONS CANNOT PROVIDE EXTRA
7 DOCUMENTATION?

8 A. WELL, IF THEY CANNOT OR WILL NOT, EITHER OR,
9 PROVIDE DOCUMENTATION FOR OUR REVIEW WE WILL MAKE A
10 DECISION BASED ON THE INFORMATION THAT WE HAVE AVAILABLE
11 TO US.

12 Q. I WANT TO -- I WANT TO GO BACK AND BE SPECIFIC.
13 NOT THAT THEY WILL NOT PROVIDE THE
14 DOCUMENTATION BUT THEY CANNOT OR DO NOT HAVE ACCESS, SO
15 WHAT PROTOCOLS OR -- DO YOU HAVE IN PLACE THAT IF A
16 PERSON CANNOT PROVIDE NEW DOCUMENTATION WHEN APPLYING
17 FOR ACCOMMODATIONS?

18 A. I BELIEVE I JUST ANSWERED THAT, BUT IF THEY
19 CANNOT SUPPLY ANY ADDITIONAL DOCUMENTATION WE WILL MAKE
20 A DECISION BASED ON THE INFORMATION THAT WE DO HAVE.

21 Q. THANK YOU.

22 SO IT SAYS HERE THAT -- SO ACCORDING TO
23 YOUR -- ACCORDING TO YOUR DECLARATION FILED BY THE
24 NBME'S RESPONSE OPPOSING MY PRELIMINARY INJUNCTION,
25 ISN'T IT TRUE THAT DR. LUCIA MCGEEHAN WAS THE ONLY

1 MANAGER TO REVIEW MY APPLICATION FOR ACCOMMODATIONS?

2 A. THAT IS CORRECT.

3 Q. AND NO OTHER ANALYST REVIEWED MY APPLICATION;
4 CORRECT?

5 A. CORRECT.

6 Q. NO CONSULTANT REVIEWED MY APPLICATION; CORRECT?

7 A. CORRECT.

8 Q. IF I COULD -- YES, IF WE CAN BRING UP DOCUMENT
9 -- I'M SORRY, EXHIBIT PX 75? SCROLL DOWN, PLEASE.

10 OKAY. AND MS. MEW ACTUALLY HAD I THINK SHE HAD IT -- NO
11 THIS IS --

12 MS. MEW: JUST TO CLARIFY THAT'S --

13 DR. KITCHENS: PX 69. THANK YOU, SORRY.

14 BY DR. KITCHENS:

15 Q. CAN YOU READ THE TITLE OF THIS DOCUMENT ON THE
16 SCREEN?

17 A. THIS IS THE GENERAL GUIDELINES TO REQUEST TEST
18 ACCOMMODATIONS.

19 Q. OKAY. AND IN YOUR POSITION AS THE DIRECTOR OF
20 DISABILITY SERVICES, DID YOU HELP IN ANY WAY TO
21 CONSTRUCT SOME OF THESE GUIDELINES?

22 A. MANY OF THESE GUIDELINES HAVE BEEN IN PLACE FOR
23 MANY YEARS. I AM GENERALLY AWARE OF THEM AND REFER TO
24 THEM BUT WE HAVE NOT ALTERED THESE GUIDELINES IN MANY
25 YEARS, AND NOT IN MY TIME AS DIRECTOR.

1 Q. OKAY. SO IN AN ROUGH ESTIMATE, WHEN CAN -- WHEN
2 WAS THE LAST TIME THAT YOU CAN RECALL THESE GUIDELINES
3 WERE UPDATED?

4 A. I CANNOT RECALL SPECIFICALLY -- SO -- I DON'T --

5 Q. FIVE YEARS?

6 A. AT LEAST FIVE YEARS BUT AGAIN, I DON'T HAVE A --
7 I DON'T HAVE A SOLID RECOLLECTION OF WHEN THEY WERE LAST
8 FORMALLY UPDATED.

9 Q. SO FIVE YEARS AGO. SO?

10 A. I DIDN'T SAY FIVE YEARS AGO.

11 Q. SO ISN'T IT SAFE TO SAY THAT POSSIBLY THAT THESE
12 -- THESE GUIDELINES ARE OUTDATED FOR TODAY'S TIMES?

13 A. NO.

14 Q. AND WHY IS THAT?

15 A. BECAUSE THESE GUIDELINES ARE STILL APPLICABLE TO
16 TODAY'S GUIDELINES, OTHERWISE THEY WOULD HAVE BEEN
17 UPDATED SOONER IF WE HAD THOUGHT THEY WERE OUTDATED.

18 Q. SO -- SO YOU ARE SAYING THAT -- AND FOR
19 CLARIFICATION, ARE YOU SAYING THAT IT JUST DEPENDS UPON
20 WHAT THE NBME FEELS ARE APPLICABLE FOR TODAY'S TIMES?

21 A. IT'S WHAT'S APPLICABLE AND AGAIN, THESE ARE
22 GENERAL GUIDELINES FOR THE NBME PROCESS. AND SPECIFIC
23 GUIDELINES ARE GENERALLY BASED AROUND INDUSTRY
24 STANDARDS.

25 Q. INDUSTRY STANDARDS.

1 SO THEY USE DIFFERENT TYPES OF METRICS TO
2 COME UP WITH THESE GUIDELINES; IS THAT WHAT YOU ARE
3 SAYING?

4 A. I'M NOT SURE I UNDERSTAND WHAT YOU ARE MEAN BY
5 METRICS.

6 Q. YES. SO YOU SAID ABOUT THE INDUSTRY.

7 WHAT DO YOU MEAN BY THE INDUSTRY? I
8 GUESS I WAS GATHERING THAT THEY DID SOME TYPE OF STUDY
9 TO SHOW THAT THESE GUIDELINES ARE STILL RELEVANT FOR
10 TODAY'S TIME.

11 A. WELL, RIGHT. SO IF YOU -- LIKE, IF YOU LOOK AT
12 THE GUIDELINES FOR ADHD, RIGHT, AN EVALUATION BY AN
13 APPROPRIATE CLINICIAN IS STILL THE INDUSTRY STANDARD FOR
14 BEING DIAGNOSED WITH ADHD AND HAVING A FORMAL EVALUATION
15 AND HISTORY DOCUMENTED.

16 Q. YES. THAT'S TRUE -- OKAY.

17 AND I UNDERSTAND THAT, BUT FOR YOUR
18 GUIDELINES HERE, IT REQUIRES -- YOU KNOW, HERE AND
19 THROUGHOUT THIS ENTIRE LITIGATION WE HAVE SHOWN HERE
20 THAT EVEN IF THAT DOCUMENTATION IS -- IS GIVEN THAT
21 THINGS COULD BE MISCONSTRUED.

22 SO ISN'T IT TRUE THAT YOU HAVE TESTIFIED
23 EARLIER TODAY THAT THERE HAS BEEN E-MAILS SENT TO --
24 FROM DISABILITY SERVICES TO ME ASKING FOR MORE
25 DOCUMENTATION?

1 MS. MEW: YOUR HONOR, I WANT TO OBJECT
2 JUST TO THAT BECAUSE THERE WAS TESTIMONY AT THE
3 BEGINNING OF THE -- OF THAT QUESTION AND THEN THERE WAS
4 A QUESTION.

5 DR. KITCHENS: I WILL REPHRASE THE
6 QUESTION.

7 THE COURT: AND I -- DR. KITCHENS, IT'S
8 ACTUALLY HELPFUL TO KEEP YOUR QUESTIONS SHORT WHEN YOU
9 CAN, JUST FOR THE WITNESS'S BENEFIT AND FOR MINE AS
10 WELL. MAYBE YOU CAN REPHRASE THAT?

11 DR. KITCHENS: YES, SIR. YES, JUDGE.
12 BY DR. KITCHENS:

13 Q. ISN'T IT TRUE THAT YOU TESTIFIED EARLIER THAT
14 THE DISABILITY SERVICES REQUESTED MORE DOCUMENTATION?

15 A. THAT'S CORRECT.

16 Q. FOR MY -- THANK YOU.

17 I WOULD LIKE TO -- LET'S SEE HERE IF I
18 COULD, LET'S SEE IF I HAVE -- IF WE COULD PULL UP THE
19 CHART THERE. YES. THIS IS PX 75.

20 AND MS. CONVERY, CAN YOU TELL US WHAT
21 THIS DOCUMENT -- DO YOU RECOGNIZE THIS DOCUMENT ON THE
22 PAGE?

23 A. YES I DO.

24 Q. SO WITH THIS DOCUMENT HERE, IF WE CAN KIND OF
25 ZOOM OR SCROLL DOWN JUST A LITTLE BIT HERE. CAN YOU

1 EXPLAIN THIS DOCUMENT FROM YOUR POSITION?

2 A. SURE. THIS IS THE GENERAL OVERALL PROCESS FLOW
3 MAP THAT WE WERE TALKING ABOUT JUST A LITTLE WHILE AGO,
4 TO SHOW THE GENERAL FLOW AND DECISION TREE PROCESS OF
5 THAT FLOW WHEN A CASE COMES IN TO DISABILITY SERVICES.

6 Q. SO BY LOOKING AT THIS, THIS IS AN INTERNAL
7 DOCUMENT; CORRECT, THAT YOU --

8 A. CORRECT.

9 Q. AND IF WE FOLLOW THIS -- THIS FLOW CHART HERE,
10 WHEN DR. MCGEEHAN REVIEWED MY -- WHEN SHE REVIEWED MY --
11 MY APPLICATION, SHE DID NOT ASSIGN IT TO ANY -- SHE DID
12 NOT SEND IT OUT TO ANY EXPERTS -- I MEAN, ANY OUTSIDE
13 EXPERTS; CORRECT?

14 A. ANY -- CORRECT.

15 Q. OKAY.

16 DR. KITCHENS: YOUR HONOR, I WOULD LIKE
17 TO ADMIT EXHIBIT PX 75 INTO THE RECORD?

18 PLEASE LEAVE THIS UP.

19 MS. MEW: IT'S ALREADY IN THE RECORD.

20 DR. KITCHENS: OKAY. THANK YOU.

21 BY DR. KITCHENS:

22 Q. AND MS. CONVERY, ISN'T IT TRUE THAT THE -- THE
23 REASON THAT SHE DID NOT MOVE FORWARD IN REFERRING MY
24 APPLICATION TO AN OUTSIDE EXPERT IS BECAUSE I DIDN'T
25 HAVE -- DID NOT PROVIDE MORE DOCUMENTATION WHEN

1 REQUESTED?

2 A. CORRECT, SHE FELT SHE COULD MAKE A DECISION
3 BASED ON THE INFORMATION THAT YOU PROVIDED TO US.

4 Q. THANK YOU.

5 WE CAN REMOVE THIS DOCUMENT HERE. IF WE
6 CAN PULL UP -- YES. SORRY. GO BACK TO PX 69. AND WE
7 JUST WAS ON THIS PARTICULAR EXHIBIT HERE.

8 DO YOU SEE WHERE IT STATES, "REQUESTS FOR
9 ACCOMMODATIONS MUST INCLUDE THE FOLLOWING"?

10 A. YES.

11 Q. AND CAN YOU LOOK AT THE SUBPARAGRAPH 4, WHERE IT
12 STATES "RELEVANT OBJECTIVE RECORDS OF IMPAIRED
13 FUNCTION"?

14 A. YES.

15 Q. AND MS. CONVERY, CAN YOU READ FOR THE COURT THE
16 FIRST BULLET POINT THERE?

17 A. "OBJECTIVE RECORDS OF FUNCTIONING SHOULD BE
18 SUBMITTED TO DOCUMENT THE REAL WORLD CURRENT IMPACT OF
19 THE DISABILITY AND DEMONSTRATE HOW A MAJOR LIFE ACTIVITY
20 RELEVANT TO THE SETTING AND CONTEXT OF THE SPECIFIC
21 EXAMINATION IS SUBSTANTIALLY LIMITED."

22 Q. YES. AND THEN UNDERNEATH THAT PARTICULAR
23 PARTICULAR BULLET POINT CAN YOU READ FOR THE COURT
24 RECORD THE -- THE TIME OF TYPES OF DOCUMENTATION?

25 A. "EXAMPLES OF SUPPORTING DOCUMENTATION INCLUDE

1 BUT ARE NOT LIMITED TO; PRIOR CLINICAL EVALUATIONS,
2 DIAGNOSTIC REPORTS, TREATMENT AND/OR EDUCATIONAL PLANS,
3 OR OTHER RELEVANT MEDICAL RECORDS."

4 Q. CAN YOU SCROLL DOWN, PLEASE.

5 A. -- DID YOU WANT ME TO CONTINUE?

6 Q. FOR TIME SAKE WE WILL STOP THERE.

7 BUT YOU DO RECOGNIZE THIS DOCUMENT;
8 CORRECT?

9 A. CORRECT.

10 Q. AND THESE ARE DOCUMENTS THAT WERE SUBMITTED WITH
11 MY APPLICATIONS; CORRECT?

12 A. WHAT -- YOU MEAN CLINICAL EVALUATIONS AND
13 DIAGNOSTIC REPORTS?

14 Q. FROM WHAT YOU JUST READ HERE, THESE ARE SOME
15 DOCUMENT -- TYPES OF DOCUMENTATION THAT I SUBMITTED WITH
16 BOTH OF MY APPLICATIONS; CORRECT?

17 A. YOU SUBMITTED A LETTER FROM A TREATMENT PROVIDER
18 AND PRINTOUTS FROM A MEDICAL HISTORY RECORD, MEDICAL
19 RECORD.

20 Q. SORRY. YEAH.

21 SO ARE THESE TYPES OF DOCUMENTATION THAT
22 WOULD BE ACCEPTED ON -- FOR ONE'S APPLICATION?

23 A. I MEAN, EVERY PIECE OF DOCUMENTATION THAT
24 SOMEONE CHOOSES TO SUBMIT IS ACCEPTED, IT IS ACCEPTABLE
25 DOCUMENTATION.

1 Q. YES. SO CAN WE SCROLL UP JUST A LITTLE BIT,
2 PLEASE? YES, STOP THERE.

3 DID I PROVIDE -- DID I -- DO YOU SEE THE
4 FIRST BULLET POINT THERE, THE SECOND BULLET POINT SAYS,
5 "EXAMPLES OF SUPPORTING DOCUMENTS AND THEN THERE'S A --
6 ONE -- THERE'S A POINT RIGHT UP UNDER THAT.

7 WOULD YOU AGREE THAT TREATMENT AND --
8 THAT TREATMENT AND RELEVANT MEDICAL RECORDS WERE
9 SUBMITTED WITH MY APPLICATIONS?

10 A. TREATMENT RECORDS WERE SUBMITTED WITH YOUR
11 APPLICATION, YES.

12 Q. AND ISN'T IT TRUE THAT RELEVANT MEDICAL RECORDS
13 WAS ALSO SUBMITTED?

14 A. I MEAN, RELEVANT TO THE DIAGNOSIS OF ADHD? OR
15 RELEVANT TO SOME OTHER -- WHAT DO YOU MEAN?

16 Q. RELEVANT TO -- RELEVANT TO MY REQUEST ON MY
17 ACCOMMODATIONS APPLICATION?

18 A. AGAIN, ALL INFORMATION THAT YOU -- THAT YOU
19 SUBMITTED FOR OUR REVIEW, IF YOU CONSIDERED THAT TO BE
20 RELEVANT, IT'S PART OF YOUR FILE. WE ARE NOT HERE TO
21 SAY WHETHER -- WE ARE NOT GOING TO NOT ACCEPT SOMETHING
22 THAT SOMEBODY CHOOSES TO SUBMIT TOWARDS THAT.

23 Q. OKAY. IF WE CAN -- 69, I THINK 69 FOR -- OKAY,
24 SO LET'S MOVE DOWN SOME MORE, PLEASE? STOP HERE,
25 PLEASE.

1 SO CAN YOU READ THE -- DO YOU SEE THE
2 LAST BULLET POINT THERE?

3 A. WHERE IT SAYS -- STARTS WITH "OFFICIAL"?

4 Q. YEAH, SO -- YES.

5 DIDN'T I SUBMIT THESE TYPE OF
6 DOCUMENTATIONS FROM MY SCHOOL, SAYING THAT I HAVE HAD
7 ACCOMMODATIONS ON OTHER TEST EXAMINATIONS?

8 A. NO.

9 Q. CAN WE PULL UP MY SECOND APPLICATION, PLEASE?
10 I THINK IT'S -- IS IT PX 3, MAYBE? YES, CAN YOU SCROLL
11 DOWN? YES, HERE, AND CAN YOU ZOOM IN HERE? SCROLL UP
12 TO THE TOP SO THAT MS. CONVERY CAN SEE THIS THE
13 DOCUMENT, PLEASE?

14 THIS IS P EXHIBIT PX 03.

15 A. OKAY.

16 Q. CAN YOU SCROLL TO THE VERY TOP, PLEASE, AMELIA,
17 SO SHE CAN SEE WHAT THIS DOCUMENT IS?

18 DO YOU RECOGNIZE THIS DOCUMENT?

19 A. YOUR REQUEST FOR TEST ACCOMMODATIONS FORM?

20 Q. YES. AND SCROLL DOWN PLEASE SO SHE CAN SEE --
21 YES.

22 SO HERE.

23 A. MM-HMM.

24 Q. I WANT HER TO -- YES. THERE.

25 DO YOU SEE -- FOR -- ON THIS PARTICULAR

1 SCREEN HERE, THIS IS WHERE I TOOK THIS CBSE PROVIDED BY
2 MY -- BY MY UNIVERSITY; OKAY?

3 A. MM-HMM.

4 Q. DO YOU SEE WHERE IT SAYS, "TESTING
5 ACCOMMODATIONS"?

6 A. YES.

7 Q. CAN YOU READ BELOW, WHAT THAT SAYS BELOW IT?

8 A. IT SAYS "EXTENDED TIME."

9 Q. SO WOULDN'T -- ISN'T IT TRUE THAT THIS IS AN
10 OFFICIAL DOCUMENT PROVING THAT A SCHOOL OR UNIVERSITY
11 HAS PROVIDED OFFICIAL ACCOMMODATIONS ON PRIOR TESTS?

12 A. I WOULDN'T CONSIDER THIS DOCUMENT FROM
13 PROMETRIC, WHICH IS OUR THIRD PARTY VENDOR TO BE AN
14 OFFICIAL RECORD OF TEST ACCOMMODATIONS GIVEN BY YOUR
15 MEDICAL SCHOOL, NO.

16 Q. ISN'T IT TRUE THAT THE UNIVERSITY HAS TO FIRST
17 PURCHASE THE -- THE EXAMINATION FROM THE NBME?

18 A. CORRECT, YES.

19 Q. AND ONCE THAT -- ONCE THEY MAKE THAT -- WHEN
20 THEY MAKE THAT PURCHASE FOR -- FOR NBME, ISN'T IT TRUE
21 THAT THEY THEN HAVE TO GET PERMISSION WHETHER OR NOT TO
22 PROVIDE ACCOMMODATIONS ON THESE PARTICULAR EXAMINATIONS?

23 A. YES, THEY DO.

24 Q. SO ISN'T IT TRUE THAT THIS STATEMENT OF EXTENDED
25 TIME PROVES THAT THE UNIVERSITY GAVE OFFICIAL

1 ACCOMMODATIONS ON A PREVIOUS HIGH STAKES EXAMINATION?

2 A. WELL, THIS -- THE CBSE IS -- IS A SUBJECT EXAM.

3 ITS NOT IT'S NOT THE SAME AS A -- IT'S NOT A HIGH STAKES

4 EXAM AS FAR AS -- OR IN THE SAME VAIN BUT THIS, AGAIN,

5 IS FROM PROMETRIC.

6 IT IS NOT A DIRECT FORM SUBMITTED BY YOUR

7 MEDICAL SCHOOL CONFIRMING THAT THEY INTENDED TO GIVE YOU

8 EXTENDED TIME AND THE PURPOSE OR THE TIMELINE IN WHICH

9 THEY DECIDED TO PROVIDE YOU THAT ACCOMMODATION.

10 SO AGAIN, I THINK THE WORD WE WERE HONING

11 IN ON THE DOCUMENT BEFORE THIS WAS AN OFFICIAL RECORD OF

12 PREVIOUS TEST ACCOMMODATIONS AND THIS IS AN E-MAIL FROM

13 PROMETRIC, NOT AN OFFICIAL RECORD FROM YOUR MEDICAL

14 SCHOOL.

15 Q. SO AS A CANDIDATE THAT IS TAKING THIS

16 EXAMINATION ARE THEY ALLOWED TO -- TO AUTOMATICALLY --

17 SO -- OKAY. I THINK I MADE MY POINT HERE.

18 THIS IS ALREADY IN THE RECORD. WE CAN

19 MOVE FROM THAT ONE, PLEASE. AND CAN WE BRING BACK UP

20 THE OTHER EXHIBIT. I DON'T THINK I HAVE THAT IN THE

21 RECORD THERE.

22 YES. 61. I THINK -- YES. I WOULD LIKE

23 FOR PX 69 TO BE PUT INTO THE RECORD IF IT'S NOT RECORD.

24 YES, IT IS, IT IS IN THE RECORD. WAIT, NO IT'S NOT.

25 I WOULD MOVE TO PUT EXHIBIT PX 69 INTO

1 THE RECORD, YOUR HONOR?

2 THE COURT: IT TOOK ME A SECOND I FOUND
3 IT. ITS ADMITTED ALREADY.

4 MS. MEW: ITS HAS NOT BEEN I THINK YOU
5 ARE THINKING OF DX 69.

6 THE COURT: NO, YOU ARE RIGHT. YOU ARE
7 RIGHT.

8 MS. MEW: NO OBJECTION. I HAVE NO
9 OBJECTION TO PX 69 BEING ADMITTED.

10 THE COURT: ALL RIGHT THEN, PX 69 IS
11 ADMITTED.

12 (PLAINTIFF EXHIBIT 69 IS ADMITTED INTO
13 EVIDENCE.)

14 BY DR. KITCHENS:

15 Q. WOULD A TEACHER BE CONSIDERED A PROFESSIONAL TO
16 SUBMIT A LETTER FOR ACCOMMODATIONS FOR THEIR STUDENT --
17 LET ME REPHRASE IT TO MAKE IT MORE CLEAR.

18 WOULD YOU CONSIDER A TEACHER TO BE A
19 PROFESSIONAL?

20 A. YES.

21 Q. SO ISN'T IT TRUE THAT A LETTER IS CONSIDERED A
22 CORRESPONDENCE?

23 A. A LETTER IS CORRESPONDENCE, YES.

24 Q. SO A LETTER FROM A TEACHER WOULD HAVE TO BE ON
25 THE SCHOOL'S OFFICIAL LETTERHEAD; CORRECT?

1 A. NO, IF THE SCHOOL HAS LETTERHEAD, SURE,
2 PREFERABLY.

3 Q. YES. SO. I GUESS ON THIS PARTICULAR QUESTION
4 HERE, I AM ASKING YOU, WHEN THE TEACHER WRITES -- DOES
5 THE NBME ACCEPT LETTERS FROM A TEACHER WITHOUT A
6 LETTERHEAD?

7 A. YES, WE DO, IF THEY ARE SIGNED AND THEY ARE --
8 YOU KNOW, THEY HAVE INCLUDED THE TEACHER'S SIGNATURE.

9 Q. DO YOU SEE HERE -- LET'S SEE HERE.

10 AND DO YOU SEE WHERE THIS SECOND BULLET
11 POINT -- FIRST OF ALL, DO YOU RECOGNIZE THIS DOCUMENT,
12 THIS IS ONE WE JUST WENT OVER -- THIS IS PX 69, PX 69.

13 A. YES, I DO RECOGNIZE IT.

14 Q. YES. CAN YOU SEE THIS PARTICULAR -- THE SECOND
15 BULLET POINT THERE?

16 A. YES.

17 Q. AND CAN YOU READ THAT OUT LOUD FOR THE RECORD?

18 A. "REPORTS AND CORRESPONDENCE FROM PROFESSIONALS
19 MUST BE TYPEWRITTEN ON OFFICIAL LETTERHEAD, DATED AND
20 SIGNED BY THE PROFESSIONAL. HANDWRITTEN OR UNSIGNED
21 LETTERS FROM PHYSICIANS OR EVALUATORS WILL NOT BE
22 ACCEPTED."

23 Q. SO ISN'T IT TRUE THAT A TEACHER MUST WRITE A
24 LETTER OF RECOMMENDATION ON AN OFFICIAL LETTERHEAD?

25 A. I MEAN, IT'S GUIDELINES, IT'S SUGGESTED, YES.

1 Q. SO THE ANSWER IS -- ARE YOU SAYING THAT THE
2 ANSWER IS YES?

3 A. I MEAN, I -- GENERALLY SPEAKING, YES.

4 Q. OKAY. THANK YOU.

5 YOU CAN WE CAN MOVE FROM THIS PARTICULAR
6 DOCUMENT, I THINK, AT THIS TIME. YES.

7 SO BASED ON THE NBME'S WEBSITE THAT WE
8 JUST LOOKED AT THERE, ISN'T IT TRUE THAT UNOFFICIAL
9 ACCOMMODATIONS WOULD NOT BE ACCEPTED?

10 A. AGAIN, WHEN YOU SAY ACCEPTED, I'M NOT SURE WHAT
11 YOU MEAN BY ACCEPTED WHEN I -- BECAUSE I HAVE ALREADY
12 STATED THAT ALL DOCUMENTATIONS ARE INCLUDED IN YOUR FILE
13 THAT SOMEBODY CHOOSES TO SUBMIT TO US.

14 Q. YES. SO WHAT I AM SAYING HERE, AGAIN, WHAT WE
15 JUST READ, HANDWRITTEN OR UNSIGNED, THAT IS FROM THE --
16 YOU GUYS'S WEBSITE, HANDWRITTEN OR UNSIGNED LETTERS FROM
17 PHYSICIANS OR EVALUATORS ARE NOT ACCEPTED, SO MY
18 QUESTION IS:

19 BASED ON YOUR WEBSITE, ISN'T IT TRUE THAT
20 UNOFFICIAL ACCOMMODATIONS WOULD NOT BE ACCEPTED AS PART
21 OF DOCUMENTATION FOR ONE'S APPLICATION FOR
22 ACCOMMODATIONS?

23 A. UNOFFICIAL THAT IS UNSUBSTANTIATED BY THE
24 MEDICAL SCHOOL, I GUESS, IS WHERE YOU ARE GETTING AT, SO
25 YES.

1 Q. SO THIS IS CORRECT?

2 A. IS WHAT -- THAT IT MUST BE TYPEWRITTEN ON AN
3 OFFICIAL LETTERHEAD, IS WHAT WHAT YOU ARE SAYING TO BE
4 CORRECT?

5 Q. NO. SO MY QUESTION IS TO YOU:

6 WOULD YOU OR ANYONE IN YOUR DEPARTMENT,
7 SAY DR. MCGEEHAN, WOULD SHE ACCEPT -- OR IN YOUR --
8 WELL, NOT SHE BECAUSE WE ARE LOOKING AT GUIDELINES HERE.

9 DOES THE NBME'S GUIDELINES WITHIN
10 DISABILITY SERVICES ALLOW UNOFFICIAL ACCOMMODATIONS TO
11 BE ACCEPTED AS PART OF AN APPLICATION FOR
12 ACCOMMODATIONS?

13 A. THE ANSWER IS YES, BECAUSE ALL DOCUMENT --

14 Q. BUT ISN'T IT IT TRUE THAT YOUR ANSWER HERE GOES
15 AGAINST THE WRITING THAT'S HERE OTHERWISE THE WEBSITE?

16 A. NO.

17 Q. OKAY. I DIGRESS. I WILL MOVE ON. WE CAN
18 REMOVE -- SO -- AND LASTLY, ON THIS PARTICULAR DOCUMENT,
19 ISN'T IT TRUE THAT IF AN APPLICANT RECEIVED
20 ACCOMMODATIONS IN SCHOOL, THEY WOULD HAVE TO ATTACH
21 OFFICIAL RECORDS CONFIRMING THE ACCOMMODATIONS?

22 A. FROM MEDICAL SCHOOL, YES, WE DO. THAT WAS WHAT
23 THE CPTA FORM IS FOR.

24 Q. THANK YOU.

25 AND WHAT -- LET'S SEE, AND THEN --

1 SO ISN'T IT TRUE THAT LETTERS FROM
2 PARENTS WOULD NOT BE CONSIDERED AN OBJECTIVE RECORD?

3 A. I MEAN, IT IS A PIECE OF DOCUMENTATION THAT IS
4 CONSIDERED IN THE THOROUGH REVIEW AND CONSIDERATION OF
5 EVERY REQUEST.

6 Q. WOULD THAT LETTER FROM A PARENT BE CONSIDERED AN
7 OBJECTIVE RECORD?

8 A. IT DEPENDS ON WHAT THE LETTER IS STATING, BUT
9 GENERALLY A PARENT'S LETTER IS MORE SUBJECTIVE WHEN THEY
10 ARE SPEAKING ABOUT THEIR CHILD.

11 Q. AND YOU -- WHEN I ASKED YOU THE QUESTION ABOUT
12 OFFICIAL ACCOMMODATIONS, OR CONFIRMING OFFICIAL
13 ACCOMMODATIONS FROM -- FOR SCHOOLS, YOU SAID FROM
14 MEDICAL SCHOOL.

15 WHAT ABOUT FROM ELEMENTARY SCHOOL AND
16 THROUGH ALL OF -- ANY YEAR OF THEIR ACADEMIC CAREER?

17 A. ANY TYPE OF LETTER THAT VERIFIES THAT THEY
18 RECEIVED ACCOMMODATIONS IN UNDERGRADUATE, HIGH SCHOOL,
19 ELEMENTARY SCHOOL, ANY TYPE OF EARLY CHILDHOOD EDUCATION
20 A LETTER IS PART OF THE -- AND THEY SUBMIT IS THAT ALSO
21 A CONSIDERATION POINT IN REVIEWING DOCUMENTATION FOR
22 REQUEST FOR TEST ACCOMMODATIONS.

23 Q. OKAY. CAN WE PULL UP JX 07, PLEASE? WE
24 RECENTLY ADMITTED THIS.

25 DO YOU RECOGNIZE THIS DOCUMENT, MS.

1 CONVERY?

2 A. YES.

3 MS. MEW: I DON'T MEAN TO INTERRUPT, ARE
4 YOU USING THE MOST RECENT VERSION OF THIS THAT I SENT TO
5 YOU YESTERDAY MORNING?

6 DR. KITCHENS: THIS IS JX 7, AND IT'S THE
7 ENTIRE PAGE.

8 MS. MEW: I KNOW MY QUESTION IS, I HAD TO
9 ADD SOME MORE REDACTIONS TO TAKE OUT PERSONAL
10 INFORMATION. SO I JUST -- IF YOU ARE NOT USING THE
11 VERSION THAT I GAVE YOU YESTERDAY MORNING I WOULD RATHER
12 THAT WE PUBLISH THE DOCUMENT AND WE WOULD BE HAPPY TO DO
13 IT AND SCROLL FOR YOU.

14 DR. KITCHENS: YES, MA'AM. THANK YOU,
15 MS. MEW. WE CAN REMOVE THIS ONE, THIS DOCUMENT HERE AND
16 MS. MEW WILL BRING IT UP.

17 THANK YOU FOR THAT, MS. MEW.

18 MS. MEW: THAT'S FINE. THANK YOU, DR.
19 KITCHENS.

20 DR. KITCHENS: IS IT THE SAME BATES STAMP
21 NUMBERS AS WELL?

22 MS. MEW: YES, CHRISTINE IS SAYING YES.

23 DR. KITCHENS: OKAY, THANK YOU.

24 SO YOU CAN SCROLL BACK UP TOWARDS THE
25 TOP, PLEASE.

1 BY DR. KITCHENS:

2 Q. SO MS. CONVERY, DO YOU RECOGNIZE THIS DOCUMENT
3 AS WE SCROLL THROUGH JUST A LITTLE BIT?

4 A. YES, I DO.

5 Q. OKAY. THANK YOU. AND CAN WE GO TO BATES STAMP
6 NBME 67? AND -- YES, AND ZOOM IT IN SO THAT MS. CONVERY
7 CAN READ HERE.

8 SO -- IF WE CAN SCROLL DOWN JUST A LITTLE
9 BIT SO SHE CAN SEE. SO ON THE VERY LINE OF -- THE VERY
10 LINE OF THIS PAGE CAN YOU READ FOR THE COURT WHAT IT
11 SAYS? SCROLL DOWN, THE VERY LAST LINE OF THE PAGE.

12 DO YOU SEE THE VERY LAST LINE OF THIS
13 PAGE WHERE IT SAYS "NEW REQUESTS," STARTING THERE
14 PLEASE, CAN YOU READ THAT?

15 A. "NEW REQUESTS," AND THEN A BULLET POINT.

16 "IN GENERAL THE FOLLOWING ITEMS ARE
17 REQUIRED TO BE GIVEN AN AUDIT FOR A NEW FIRST TIME
18 REQUEST FOR ACCOMMODATIONS."

19 Q. THANK YOU. CAN YOU SCROLL DOWN A LITTLE BIT,
20 PLEASE?

21 A. OKAY. AND THEN WE HAVE NUMBER ONE, "A PERSONAL
22 STATEMENT DESCRIBING THEIR IMPAIRMENT AND HOW IT IMPACTS
23 THEM IN DAILY ACTIVITIES."

24 Q. THANK YOU. AND SO WE CAN -- WE CAN SCROLL DOWN.
25 JUST FOR TIME SAKE I WON'T OF YOU READ

1 ALL OF IT, BUT DO YOU RECOGNIZE THESE PARTICULAR
2 DOCUMENTS HERE?

3 A. YES.

4 Q. AND SO, IS IT SAFE TO SAY THAT THESE PARTICULAR
5 DOCUMENTS FROM WHAT I AM LOOKING AT HERE, FOR NUMBER
6 THREE, DOCUMENTATION OF FUNCTIONING IS CURRENT, FOR
7 NUMBER FOUR A COMPLETE CERTIFICATION OF PRIOR TEST
8 ACCOMMODATIONS FROM THE CPTA, AND FIVE, WRITTEN
9 VERIFICATIONS OF APPROVED ACCOMMODATIONS.

10 DO YOU SEE THAT THERE?

11 A. YES.

12 Q. AMELIA, CAN YOU DO A WORD SEARCH FOR UNOFFICIAL
13 ACCOMMODATIONS, PLEASE? OH, SORRY.

14 SO IT SEEMS AS THOUGH -- MISS, CAN YOU
15 LEAVE THIS UP?

16 MS. CONVERY, CAN YOU READ WHAT IT SAYS
17 THERE ON THE COMPUTER?

18 A. YOU MEAN IN THE ADOBE POP-UP MESSAGE?

19 Q. YES, PLEASE?

20 A. "ADOBE ACROBAT HAS FINISHED SEARCHING THE
21 DOCUMENT. NO MATCHES WERE FOUND."

22 Q. OKAY. THANK YOU. SO THERE'S NO MATCHES FOUND.
23 YOU CAN HIT OKAY, PLEASE. THANK YOU.

24 SO THERE IS NO MATCHES FOUND FOR UN
25 OFFICIAL OR -- WITHIN THIS ENTIRE DOCUMENT AND SO IT

1 WOULD BE SAFE TO SAY WOULDN'T IT BE TRUE -- WOULDN'T IT
2 BE SAFE TO SAY THAT THERE IS NO LANGUAGE IN THIS
3 DOCUMENT FOR UNOFFICIAL ACCOMMODATIONS?

4 A. YES.

5 Q. AND ISN'T IT TRUE THAT LETTERS FROM FAMILY
6 MEMBERS OR FRIENDS ARE NOT CONSIDERED IN AN APPLICATION
7 FOR ACCOMMODATIONS?

8 A. AGAIN, I BELIEVE I ALREADY ANSWERED THIS. ALL
9 DOCUMENTATION THAT IS SUBMITTED IS REVIEWED AND
10 CONSIDERED AS A POINT OF INFORMATION.

11 Q. I'M SORRY, THAT'S NOT MY QUESTION. THAT'S NOT
12 MY QUESTION. MY QUESTION IS:

13 ARE LETTERS FROM MY FRIEND JOHN, WOULD IT
14 BE ACCEPTED TO BE CONSIDERED AS PART OF MY APPLICATION,
15 WOULD IT BE ACCEPTED?

16 A. YES, I HAVE ALREADY STATED THAT ALL
17 DOCUMENTATION THAT YOU WISH TO SUBMIT IS ACCEPTED AND
18 CONSIDERED IN OUR REVIEW PROCESS.

19 Q. OKAY. AND SO -- YOU STATED -- AND WE CAN TAKE
20 THIS DOCUMENT DOWN, PLEASE. THANK YOU.

21 SO MS. CONVERY, EARLIER YOU EXPLAINED TO
22 THE COURT WHAT THE USMLE -- WHAT THE USMLE STANDARD EXAM
23 IS; RIGHT? CORRECT?

24 A. CORRECT.

25 Q. UH-HUH. AND YOU SAID THAT -- ISN'T IT -- SO

1 WOULD YOU AGREE THAT -- NO.

2 YOU STATED EARLIER THAT BY COMPLETING ALL
3 OF THE USMLE STEP EXAMINATIONS THAT IT WOULD AUTHORIZE
4 THEM TO PRACTICE MEDICINE UNATTENDED?

5 A. UNSUPERVISED MEDICINE, YES.

6 Q. UH-HUH. AND ISN'T IT TRUE THAT WITHOUT
7 RESIDENCY PROGRAM -- WITHOUT RESIDENCY -- WITHOUT
8 COMPLETING RESIDENCY, A DOCTOR CANNOT PRACTICE MEDICINE
9 WITHOUT -- PRACTICE MEDICINE UNATTENDED JUST BECAUSE
10 THEY HAVE COMPLETED ALL THREE STEP EXAMINATIONS?

11 A. WITHOUT -- I'M SORRY, WITHOUT A RESIDENCY
12 PROGRAM, IS THAT WHAT?

13 Q. YES.

14 A. WELL, IF AGAIN, IF YOU ARE PRACTICING MEDICINE
15 IN A CLINICAL CONTEXT IN A HOSPITAL AND TREATING
16 PATIENTS, CORRECT, I DO BELIEVE YOU NEED TO HAVE YOUR
17 RESIDENCY COMPLETED AND HAVE YOUR BOARD CERTIFICATION BY
18 YOUR STATE MEDICAL BOARD.

19 Q. RIGHT. SO ISN'T IT TRUE THAT JUST BECAUSE YOU
20 HAVE COMPLETED ALL THREE STEP EXAMINATIONS THAT YOU
21 CANNOT PRACTICE CLINICAL MEDICINE AND UNATTENDED?

22 A. CORRECT.

23 Q. UNSUPERVISED?

24 A. CORRECT.

25 Q. OKAY, THANK YOU.

1 THE COURT: DR. KITCHENS ABOUT HOW MUCH
2 MORE TIME DO YOU THINK YOU HAVE FOR YOUR CROSS?

3 DR. KITCHENS: YOU KNOW, YOUR HONOR,
4 HONESTLY I THINK I HAVE GOTTEN WHAT I NEED OUT OF THIS.

5 IF THAT'S --

6 THE COURT: OKAY.

7 DR. KITCHENS: THANK YOU, MS. CONVERY.

8 THE WITNESS: THANK YOU, DR. KITCHENS.

9 THE COURT: MS. MEW, ANY REDIRECT?

10 MS. MEW: YES, YOUR HONOR.

11 REDIRECT EXAMINATION

12 BY MS. MEW:

13 Q. MS. CONVERY, I JUST WANT TO BACK UP, AND MAYBE
14 IT WOULD BE HELPFUL TO EXPLAIN THE STRUCTURE OF YOUR
15 GROUP A LITTLE BIT.

16 SO CAN YOU EXPLAIN WHAT -- WHAT THE
17 DIFFERENT POSITIONS ARE, SO THE DISABILITY SPECIALIST
18 VERSUS THE DISABILITY ANALYSTS, AND THEN WHERE YOU ARE
19 IN THAT STRUCTURE?

20 A. SURE. WE ARE MADE UP OF -- DISABILITY SERVICES
21 SPECIALISTS ARE MORE LIKE OUR FRONT LINE STAFF WHO ARE
22 ANSWERING QUESTIONS, PUTTING TOGETHER THE CASE FILE OF
23 ALL THE DOCUMENTS SUBMITTED TO US, REVIEWING IT
24 INITIALLY FOR COMPLETENESS AND, YOU KNOW, CURRENT
25 REGISTRATION.

1 AND ONCE ALL OF THOSE STEPS ARE MET THEY
2 PASS THE FILE ONTO OUR DISABILITY SERVICES ASSESSMENT
3 ANALYSTS, WHO ARE REVIEWING THE FILE COMPLETELY AND
4 THOROUGHLY AND MAKING THE DECISION ON THE REQUEST FOR
5 TEST ACCOMMODATIONS.

6 THOSE ANALYSTS REPORT UP TO DR. LUCIA
7 MCGEEHAN CURRENTLY, AND THE SPECIALISTS AND DR. MCGEEHAN
8 REPORT UP THROUGH MYSELF.

9 Q. AND JUST SO I AM CLEAR ON THAT, DO YOU REVIEW
10 THE SUBSTANTIVE DECISIONS THAT THE ANALYSTS AND MS.
11 MCGEEHAN ARE MAKING?

12 A. NO, I DO NOT.

13 Q. AND SO WHO IS RESPONSIBLE FOR ACTUALLY -- LIKE,
14 SUBSTANTIVELY REVIEWING REQUESTS AND MAKING THE
15 DECISIONS?

16 A. THE DISABILITY SERVICES ASSESSMENT ANALYST AND
17 DR. LUCIA MCGEEHAN AS THE MANAGER OF EXAMINEE
18 ACCOMMODATIONS HAS OVERALL OVERSIGHT IF THERE IS A
19 QUESTION OR CONCERN OR NEED FOR ANOTHER SET OF EYES.

20 MS. MEW: I DO NOT HAVE ANY OTHER
21 QUESTIONS.

22 THE COURT: ANY RECROSS, DR. KITCHENS?

23 DR. KITCHENS: YES, SIR.

24 RECROSS-EXAMINATION

25 BY DR. KITCHENS:

1 Q. AND JUST SPECIFICALLY WITH THIS PARTICULAR
2 TOPIC.

3 YOU TALKED ABOUT WHO THAT -- ISN'T IT
4 TRUE THAT AS THE DIRECTOR OF -- ISN'T IT TRUE THE -- AS
5 THE DIRECTOR OF DISABILITY SERVICES THAT THOSE WHO ARE
6 UNDER YOU FALL UNDER YOUR RESPONSIBILITY?

7 A. THAT IS CORRECT.

8 Q. OKAY. THANK YOU.

9 AND YOU TALKED ABOUT YOUR -- HOW YOUR
10 DEPARTMENT IS MADE UP IN DIFFERENT ROLES AND SUCH THINGS
11 OF THAT -- OF THAT NATURE; RIGHT?

12 A. YES.

13 Q. AND I WOULD LIKE TO ASK YOU HERE:

14 HOW MANY OF YOUR DISABILITY ASSESSMENT
15 ANALYSTS ARE AFRICAN AMERICAN IN YOUR DEPARTMENT?

16 A. WE DO NOT HAVE ANYBODY THAT IS AFRICAN AMERICAN.

17 Q. HOW MANY DISABILITY SPECIALISTS ARE AFRICAN
18 AMERICAN IN YOUR DEPARTMENT?

19 A. CURRENTLY TODAY, NONE.

20 Q. AND IN YOUR DIRECT DEPARTMENT, HOW MANY AFRICAN
21 AMERICANS ARE UNDER YOUR WATCH?

22 A. IN DISABILITY SERVICES SPECIFICALLY?

23 Q. YES.

24 A. CURRENTLY, TODAY, THERE ARE NONE.

25 Q. SO ZERO FOR -- SO IT'S TRUE TO SAY THAT THEY ARE

1 -- THERE ARE NO AFRICAN AMERICANS REPRESENTED IN YOUR
2 DEPARTMENT AS A WHOLE?

3 A. AS OF TODAY, THAT'S CORRECT.

4 DR. KITCHENS: THANK YOU.

5 YOUR HONOR, NO FURTHER QUESTIONS.

6 MS. MEW: YOU'RE ON MUTE, YOUR HONOR.

7 THE COURT: THANK YOU.

8 MS. CONVERY, I HAVE A COUPLE OF SHORT
9 QUESTIONS FOR YOU CLARIFICATIONS FOR ME I THINK.
10 BY THE COURT:

11 Q. WHEN YOU WERE TALKING ABOUT THE PROCESS OF
12 RECEIVING REQUESTS FOR ACCOMMODATIONS, DEALING WITH IT
13 AND RESPONDING, YOU USED THIS TERMINOLOGY ABOUT A HOLD,
14 THAT THERE WAS LIKE A HOLD ON THE -- AND THAT COULD BE
15 RELEASED, CAN YOU EXPLAIN TO ME A LITTLE BETTER WHAT IS
16 GOING ON WITH THAT?

17 A. SURE. SO AT THE TIME OF REGISTERING FOR THE
18 STEP EXAM, SOMEBODY HAS AN OPPORTUNITY TO SAY -- TO PUT
19 THEIR SCHEDULING PERMIT ON HOLD FOR REQUESTING TEST
20 ACCOMMODATIONS AND WHAT THAT IS, IS IT HOLDS BACK THEIR
21 SCHEDULING PERMIT WHILE THEY SUBMIT THEIR REQUESTS FOR
22 TEST ACCOMMODATIONS AND WHILE IT IS UNDER REVIEW, SO
23 THAT ONCE THE SCHEDULING PERMIT IS ISSUED TO THEM IT'S
24 THE CURRENT AND CORRECT PERMIT.

25 IF SOMEBODY DOES NOT CHECK THAT BOX THEY

1 GET A STANDARD PERMIT. THEY CAN STILL SUBMIT A REQUEST
2 TO US AND WE WILL STILL REVIEW IT, BUT IF THEY ARE TO BE
3 APPROVED FOR TEST ACCOMMODATIONS WE NEED TO GO BACK TO
4 THE REGISTRATION AND WORK WITH THE EXAMINEE AND THE
5 REGISTRATION ENTITY TO RE REGISTER THAT BACK END
6 PROCESS, GET THEM ON HOLD SO THAT WE CAN APPLY THE
7 ACCOMMODATIONS ELECTRONICALLY TO THE PERMIT, SO WHEN
8 THEY DO -- WHEN THE PERMIT IS ISSUED, THE HOLD RELEASED,
9 THEY ARE GETTING THE CORRECT PERMIT TO SCHEDULE THE EXAM
10 WITH.

11 Q. IS THERE ANY LIMIT AS TO HOW LONG THAT PERMIT
12 CAN BE HELD?

13 A. NO, THERE IS NO -- THERE IS NO LIMITS. BUT
14 GENERALLY, IF SOMEBODY IS ACTIVELY ENGAGED IN THE
15 PROCESS, OUR SPECIALIST ARE MONITORING THAT. SO FOR
16 EXAMPLE, IF SOMEBODY WERE TO PUT THEMSELVES ON HOLD AND
17 NEVER CONTACT US AND SUBMIT A REQUEST FOR
18 ACCOMMODATIONS, WHICH DOES HAPPEN, WE WILL REACH OUT TO
19 THE EXAMINEE IF WE ARE ABLE TO, IF WE HAVE THEIR CONTACT
20 INFORMATION, OR TO THE REGISTRATION ENTITY AND LET THEM
21 KNOW THAT IT'S ON HOLD AND CONFIRM WHETHER OR NOT THEY
22 ARE EVER GOING TO SUBMIT A REQUEST, OR RELEASE THE HOLD
23 IF IT WAS DONE IN ERROR, WHICH HAPPENS QUITE FREQUENTLY,
24 AND THEY WILL BE AN ISSUE A STANDARD PERMIT AT SOME
25 POINT IN TIME.

1 Q. IS THERE SOME -- IS THERE ANY PRACTICAL
2 DIFFERENCE BETWEEN JUST KEEPING A PERMIT ON HOLD FOR A
3 LONG TIME VERSUS LETTING THE PERMIT EXPIRE AND
4 REQUESTING ANOTHER ONE?

5 A. SO IF IF IT EXPIRES THEN THE APPLICANT WOULD
6 HAVE TO GO THROUGH THE REGISTRATION PROCESS AGAIN AND
7 INCUR RE REGISTRATION FEES AND THINGS OF THAT NATURE TO
8 GET A NEW AND CURRENT PERMIT.

9 THERE IS A GRACE PERIOD ON THE
10 EXPIRATION, I THINK IT'S 30 DAYS. SO IF, BY CHANCE,
11 THEY LET IT EXPIRED ACCIDENTALLY, THEY HAVE A 30-DAY
12 GRACE PERIOD WITH THE REGISTRATION ENTITY TO GET THAT
13 CURRENT WITHOUT HAVING TO INCUR ALL OF THE NEW
14 REGISTRATION FEES.

15 Q. OKAY. THAT HELPS. I JUST WANTED TO UNDERSTAND
16 THAT LAY OF THE LAND THERE.

17 A. YEAH, THE SCHEDULING PERMIT, BECAUSE
18 ACCOMMODATIONS CAN BE MULTIPLE DAYS, WITH EXTRA TIME AND
19 WHATNOT, THE PERMIT HAS ALL OF THAT INFORMATION ENCODED
20 IN IT ELECTRONICALLY IN THE BACK END, SO THAT HELPS THEM
21 TO NOT -- TO BE ABLE TO SCHEDULE PROPERLY THE LENGTH OF
22 TIME AND AMOUNT OF DAYS NEEDED.

23 THE COURT: OKAY. DR. KITCHENS, ANY
24 FOLLOW UP TO THAT SPECIFIC QUESTIONS?

25 DR. KITCHENS: NO, YOUR HONOR.

1 THE COURT: OKAY, MS. MEW?

2 DR. KITCHENS: SORRY? YES, YOUR HONOR.

3 NO, I DO NOT. SORRY.

4 THE COURT: OKAY.

5 MS. MEW: YOU KNOW, I MIGHT -- I DO JUST
6 HAVE A FOLLOW UP JUST, AGAIN, TO MAKE SURE EVERYONE IS
7 UNDERSTAND THE PROCESS.

8 FURTHER REDIRECT EXAMINATION

9 BY MS. MEW:

10 Q. SO MS. CONVERY, IS THE EXAM ESSENTIALLY -- YOU
11 KNOW, BECAUSE SOME EXAMS YOU HAVE FIVE DAYS PER YEAR
12 WHERE IT IS OFFERED.

13 DOES THE NBME OFFER -- THE USMLE OFFERED
14 PRETTY MUCH CONTINUALLY THROUGHOUT THE YEAR?

15 A. YES. ALL THREE STEPS ARE CONTINUOUS TESTING.

16 Q. AND SO YOU GET SORT OF THIS THREE-MONTH PERIOD
17 AND THEN ONCE YOU HAVE YOUR PERMIT, YOU CAN -- AND I AM
18 JUST DOING THIS IN THE INTEREST OF TIME -- YOU CAN GO
19 AND SCHEDULE LIKE WITH PROMETRIC AS SOON AS THEY HAVE AN
20 APPOINTMENT OPEN?

21 A. MM-HMM, THAT'S CORRECT. YOU CAN HAVE YOUR
22 THREE-MONTH LONG ELIGIBILITY PERIOD, AND ONCE YOU HAVE
23 YOUR PERMIT YOU CAN SCHEDULE WITH PROMETRIC FOR ANY TIME
24 AT YOUR CONVENIENCE AND AT YOUR LEISURE, AND YOU DO HAVE
25 AN EXTENSION -- EXAMINEE ARE ALLOWED TO EXTEND THEIR

1 ELIGIBILITY PERIOD FOR A CONTINUOUS THREE MONTHS WITH A
2 FEE.

3 THE COURT: OKAY. ALL RIGHT. IN THAT
4 CASE, MS. CONVERY, YOU MAY BE EXCUSED.

5 THE WITNESS: THANK YOU, VERY MUCH.

6 DR. KITCHENS: THANK YOU, MS. CONVERY.

7 THE WITNESS: THANK YOU, DR. KITCHENS.

8 THANK YOU, MS. MEW. HAVE A GOOD DAY.

9 THE COURT: OKAY. WE WILL TAKE OUR LUNCH
10 BREAK NOW. WE WILL RE GROUP AT 1 P.M. TO CONTINUE.

11 QUESTION FOR THE -- BEFORE WE BREAK UP,
12 ONE QUESTION FOR THE BOTH OF YOU AND I AM THINKING A
13 LITTLE BIT ABOUT TIME. ACTUALLY, YOU KNOW, WHAT LET'S
14 DO THAT. I DID HAVE A CHANCE TO CHECK MY SCHEDULE.

15 TOMORROW WE CAN PICK BACK UP TOMORROW AT
16 9 A.M. AND I CAN GIVE YOU THE WHOLE DAY, EXCEPT FOR I
17 HAVE ONE OTHER VIDEO CONFERENCE AT 10:00. SO WHAT WE
18 WILL HAVE TO DO IS PICKUP AT 9:00, GO FROM 9:00 TO
19 10:00, OR A COUPLE OF MINUTES BEFORE 10:00, THEN WE WILL
20 TAKE LIKE PROBABLY 15 MINUTES, REALLY, WE CAN TAKE A
21 15 MINUTE BREAK AND THEN RE GROUP AND CONTINUE ON AND,
22 LIKE I SAID, I CAN GIVE YOU THE DAY.

23 WE SHOULD TRY REALLY HARD TO FINISH
24 TOMORROW IF WE CAN. FRIDAY IS TIGHT. I CAN MAYBE DO
25 LIKE AN HOUR AND A HALF IN THE LATE MORNING, THAT IS

1 GOING TO BE ABOUT IT FOR FRIDAY. SO I WOULD REALLY LIKE
2 TO FINISH THURSDAY.

3 I AM THINKING ABOUT CLOSING STATEMENTS,
4 WHERE IS I AM ON THAT IS PROBABLY I DON'T NEED THEM. WE
5 HAVE HAD A LOT OF DISCUSSIONS IN THIS TRIAL, AND THE
6 OPENINGS WERE -- YOU KNOW, THEY WERE PRETTY THOROUGH AS
7 WELL. AND THERE'S GOING TO BE BRIEFING I'M NOT GOING TO
8 RULE FROM THE BENCH.

9 SO I THINK WHAT WE PROBABLY DO IS GIVE
10 YOU THE ASSIGNMENT FOR POST TRIAL BRIEFING AND IF I NEED
11 TO RE GROUP EVERYONE TO HAVE SOME ARGUMENT THE BRIEFING
12 I CAN DO THAT. I THINK THAT'S WHERE I AM, AND THEN
13 THAT'LL HELP WITH THE TIME AS WELL.

14 WITH RESPECT TO HOW WE ARE USING OUR
15 TIME, ONE QUESTION I HAVE FOR BOTH OF YOU IS, YOU KNOW,
16 I WAS LOOKING AT THE ISSUES FOR THE CASE. THEY ARE
17 STATED A LITTLE DIFFERENTLY BY BOTH OF YOU BUT THEY ARE
18 MORE SIMILAR THAN THEY ARE DIFFERENT.

19 I WILL SAY, I'M NOT OVERLY -- I'M NOT --
20 I DON'T THINK I AM OVERLY CONCERNED ABOUT TWO CATEGORIES
21 OF TOPICS. THE FIRST CATEGORY OF TOPIC IS -- WELL,
22 ACTUALLY BOTH CATEGORIES COULD BE LABELED LET'S SAY
23 MOTIVATIONS AND REASONS. OKAY.

24 AND IT APPLIES BOTH TO DR. KITCHENS AND
25 TO THE NBME. I DON'T THINK I AM PARTICULARLY CONCERNED,

1 OTHER THAN FOR CONTEXT AND, YOU KNOW, TO A DEGREE TO
2 UNDERSTANDING, IN WHAT THE NBME'S AND DR. KITCHENS'
3 MOTIVATIONS AND REASONS FOR PARTICULAR DECISIONS THAT
4 WERE MADE THROUGHOUT THIS PROCESS.

5 AND EVEN FOR DR. KITCHENS, BEFORE THE
6 PROCESS -- I DON'T THINK I AM PARTICULARLY INTERESTED IN
7 THE NBME'S ADMINISTRATIVE PROCESSES AND WHETHER -- YOU
8 KNOW, WHAT WE THINK OF THOSE. SO I AM VERY CONCERNED
9 WITH THE ISSUES THAT WERE STATED IN THE BY THE PARTIES
10 IN THE PRETRIAL ORDER, ABOUT WHETHER THERE IS A
11 DISABILITY HERE AND WHETHER THE ACCOMMODATION THAT'S
12 PROPOSED IS REASONABLE.

13 THOSE ARE TWO THINGS I REALLY WANT TO
14 MAKE SURE WE SPEND A GOOD AMOUNT OF TIME ON SO I HAVE A
15 FULL AND COMPLETE RECORD ON THAT. SO I THINK I
16 ENCOURAGE YOU BOTH TRY, MAYBE OVER THE LUNCH BREAK GIVE
17 A -- TAKE ANOTHER LOOK AT THAT PRETRIAL ORDER AND WHAT
18 YOU THINK THE ISSUES IN THE CASE ARE AND THINK ABOUT
19 THAT, ESPECIALLY MAYBE DR. KITCHENS, IN FORMULATING A
20 CROSS EXAMINATION, TRYING TO HELP GET AS MUCH EVIDENCE
21 OUT ON THE KEY ISSUES; OKAY?

22 DR. KITCHENS: UNDERSTOOD, JUDGE.

23 THE COURT: MS. MEW, IS THAT OKAY?

24 MS. MEW: YES, YOUR HONOR.

25 THE COURT: OKAY. LET'S TAKE OUR LUNCH

1 BREAK AND WE WILL REGROUP AT 1 O'CLOCK.

2 (RECESS TAKEN.)

3 (CLERK OPENS COURT.)

4 THE COURT: DR. KITCHENS, ARE YOU THERE?

5 GOOD, EVERYONE IS HERE. ARE WE READY TO BEGIN?

6 DR. KITCHENS: I AM, YES.

7 THE COURT: OKAY. GOOD.

8 IN THAT CASE, MS. MEW, YOU MAY PROCEED.

9 MS. MEW: THE NATIONAL BOARD OF MEDICAL
10 EXAMINERS CALLS DR. MICHAEL GORDON.

11 THE COURT: ALL RIGHT. LYNN, WOULD YOU
12 PLEASE SWEAR IN THE WITNESS?

13 (DEFENSE WITNESS, MICHAEL GORDON, IS SWORN.)

14 THE REPORTER: PLEASE STATE AND SPELL
15 YOUR NAME FOR THE RECORD.

16 THE WITNESS: MICHAEL GORDON;
17 M-I-C-H-A-E-L, G-O-R-D-O-N.

18 THE REPORTER: THANK YOU.

19 THE COURT: ALL RIGHT.

20 GO AHEAD, MS. MEW.

21 MS. MEW: THANK YOU, YOUR HONOR.

22 DIRECT EXAMINATION

23 BY MS. MEW:

24 Q. GOOD AFTERNOON, DR. GORDON.

25 A. GOOD AFTERNOON.

1 Q. I THINK YOU HAD MENTIONED TO ME THE LAST -- AT
2 THE LAST HEARING YOU HAD SOME TROUBLE HEARING ME SO LET
3 ME KNOW AND I CAN TRY SWITCHING OVER TO THE HEADSET IF
4 YOU HAVE TROUBLE HEARING ME THIS AFTERNOON.

5 A. SO FAR I HEAR YOU QUITE WELL, SO THANKS.

6 Q. THANK YOU.

7 DR. GORDON, WHAT IS YOUR EDUCATIONAL
8 BACKGROUND?

9 A. A PH.D. IN CLINICAL PSYCHOLOGY, AFTER A MASTERS
10 AND UNDERGRADUATE DEGREE, ALSO INTERNSHIPS FOR MY
11 CLINICAL DEGREE.

12 Q. DO YOU HAVE A PARTICULAR SPECIALTY?

13 A. MY SPECIALTY IS CLINICAL PSYCHOLOGY. WITHIN
14 THAT, MY SPECIALTY HAS BEEN ATTENTION
15 DEFICIT-HYPERACTIVITY DISORDER IN CHILDREN AND ADULTS.

16 Q. HOW LONG -- AND IF I SAY ATTENTION
17 DEFICIT-HYPERACTIVITY DISORDER, CAN WE ALL AGREE WE CAN
18 ALSO SAY THAT IS ADHD?

19 A. YES, WE CAN.

20 Q. HOW LONG HAVE YOU WORKED THE FIELD OF ADHD?

21 A. SINCE 1977.

22 Q. HOW MANY INDIVIDUALS DO YOU ESTIMATE THAT YOU
23 HAVE EVALUATED CLINICALLY FOR ADHD?

24 A. HUNDREDS.

25 Q. I WILL PULL UP EXHIBIT DX 58. WE WILL CLICK

1 THROUGH VERY QUICKLY SO YOU CAN SEE WHAT IS HERE.

2 IF YOU CAN TAKE MY WORD FOR IT, DR.

3 GORDON, IS THIS A TRUE AND CORRECT COPY OF YOUR C.V.?

4 A. IT IS.

5 MS. MEW: DEFENDANT MOVES TO ADMIT DX 58?

6 DR. KITCHENS: NO OBJECTIONS.

7 THE COURT: ADMITTED.

8 (DEFENSE EXHIBIT 58 IS ADMITTED INTO
9 EVIDENCE.)

10 BY MS. MEW:

11 Q. IF WE TURN TO PAGE 2, OF YOUR C.V., AT THE TOP
12 IT MENTIONS THAT YOU ARE AN INDUCTEE TO THE CHADD HALL
13 OF FAME.

14 WHAT IS CHADD?

15 A. CHADD IS A NATIONAL SUPPORT GROUP FOR CHILDREN
16 AND ADOLESCENTS AND ADULTS WITH ADHD. IT STARTED WITH
17 CHILDREN, AND THAT'S WHY ITS CHILDREN WITH ADD, ALTHOUGH
18 THAT DOESN'T REFLECT THE FACT THAT BACK IN THE 80'S, OR
19 EARLY '90'S, WHEN THIS BEGAN PEOPLE THOUGHT THAT ADD DID
20 NOT HAPPEN IN ADULTS, THAT IT WENT AWAY DURING
21 ADOLESCENCE, SO THAT WAS WHY IT WAS CHADD. IT HAS NOT
22 CHANGED.

23 Q. DO YOU KNOW WHY YOU WERE INDUCTED INTO ITS HALL
24 OF FAME?

25 A. I THINK IT WAS RECOGNIZING THE FACT THAT I WAS

1 VERY VERY INVOLVED IN THE BEGINNING AND IN ESTABLISHING
2 DIAGNOSTIC PROCEDURES, TREATMENT APPROACHES, FOR THE
3 DISORDER, I WAS INVOLVED IN ADVOCACY TO GET ADHD
4 RECOGNIZED AS A LEARNING PROBLEM AND AN EDUCATIONAL
5 PROBLEM UNDER THE I-D-E-A.

6 I JUST WAS VERY VERY INVOLVED IN TRYING
7 TO GET ADHD TO A POINT WHERE WE HAD RESEARCH, WE HAD
8 DIAGNOSTIC PROTOCOLS THAT COULD MAKE IT A LEGITIMATE
9 DISORDER THAT PEOPLE SAW AS BONA FIDE.

10 Q. HAVE YOU AUTHORED ANY PEER-REVIEWED PAPERS ON
11 ADHD?

12 A. I HAVE.

13 Q. APPROXIMATELY HOW MANY?

14 A. 60, 70, THEREABOUTS.

15 Q. IF WE TURN TO PAGE 3, OF YOUR C.V., AT EXHIBIT
16 DX 58, IS THIS WHERE WE BEGIN A LISTING OF YOUR
17 PUBLICATIONS?

18 A. IT IS.

19 Q. AND THEN I SEE THIS CONTINUES TO PAGE 11, AND
20 THEN LISTS VARIOUS PAPER PRESENTATIONS OVER TO PAGE 14.

21 HAS THERE BEEN ANY PARTICULAR AREA OF
22 FOCUS IN YOUR RESEARCH OVER THE PAST 20 OR SO YEARS?

23 A. MY RESEARCH IS PRIMARILY FOCUSED ON DIAGNOSTIC
24 ISSUES. I WAS VERY INTERESTED FROM THE BEGINNING IN --
25 IN CONTRIBUTING WAYS, BOTH THROUGH PSYCHOLOGICAL

1 TESTING, SELF-REPORT RATING SCALE APPROACHES, TO -- TO
2 AID CLINICIANS SUCH AS MYSELF IN IDENTIFYING A DISORDER
3 THAT WASN'T AT THE TIME SO EASY TO IDENTIFY BECAUSE
4 THERE WASN'T A LOT OF CONSENSUS AT THAT MOMENT ABOUT HOW
5 BEST TO GO ABOUT IT.

6 I WAS ESPECIALLY INTERESTED IN OBJECTIVE
7 MEASURES OF ADHD BECAUSE OF THE CONCERN I HAD SHARED, BY
8 MY COLLEAGUES, ABOUT THE EXTENT TO WHICH SO MUCH OF THE
9 IDENTIFICATION OF THE DISORDER IN CHILDREN WAS BASED ON
10 PEOPLE'S OPINION. AND I WANTED TO CONTRIBUTE
11 INFORMATION THAT COULD -- THAT COULD GLEAN FROM BEHAVIOR
12 OF THE YOUNGSTERS, NOT JUST PEOPLE'S PERCEPTION OF THOSE
13 BEHAVIORS.

14 Q. HAVE YOU TAUGHT ANY CLASSES ON ASSESSING FOR
15 ADHD?

16 A. I HAVE. I HAVE TAUGHT CLASSES, CONDUCTED
17 WORKSHOPS FOR DECADES IN HOW TO EVALUATE ADHD. AGAIN,
18 FIRST WITH CHILDREN AND WE BEGAN TO REALIZE THAT ADHD
19 DID PERSIST. I WAS VERY VERY INVOLVED IN TRYING TO
20 TEACH ABOUT THE IDENTIFICATION AND MANAGEMENT OF ADHD IN
21 ADULTS.

22 Q. AND THROUGH YOUR RESEARCH AND WORK, HAVE YOU
23 FAMILIAR WITH HOW CLINICIANS ASSESS FOR ADHD?

24 A. I HAVE.

25 Q. IN YOUR TRAINING, AND YOUR WORK, ARE YOU ALSO

1 FAMILIAR WITH PSYCHIATRIC DISORDERS INCLUDING ANXIETY?

2 A. I AM.

3 Q. I THINK YOU JUST FROZE, DR. GORDON?

4 A. I'M SORRY. I DID. I AM AWARE OF THE
5 IDENTIFICATION MANAGEMENT OF ANXIETY DISORDERS, BOTH IN
6 CHILDREN AND ADULTS.

7 Q. DO YOU REVIEW REQUESTS FROM INDIVIDUALS WHO ARE
8 SEEKING ACCOMMODATIONS ON STANDARDIZED TESTS AS AN
9 OUTSIDE REVIEWER?

10 A. I DO.

11 Q. HOW LONG HAVE YOU BEEN DOING THIS WORK?

12 A. SINCE 1994, OR 1995.

13 Q. CAN YOU GIVE A COUPLE OF EXAMPLES OF THE
14 ENTITIES FOR WHOM YOU HAVE REVIEWED REQUESTS?

15 A. ACTUALLY, THE FIRST ENTITY WAS THE NATIONAL
16 BOARD OF MEDICAL EXAMINERS. I WAS INVOLVED BOTH IN
17 REVIEWING REQUESTS AND ALSO HELPING TO ESTABLISH
18 DOCUMENTATION REQUIREMENTS FOR EVALUATING THESE -- THESE
19 REVIEWS THAT WERE COMING IN.

20 THIS WAS JUST A COUPLE OF YEARS AFTER THE
21 PASSAGE OF THE ADA, AND IT TOOK A WHILE TO -- AS YOU
22 MIGHT IMAGINE FOR ENTITIES, AND FOR US REVIEWERS, TO TRY
23 TO DETERMINE HOW BEST TO GO ABOUT THIS.

24 THIS LED TO A GREAT DEAL OF RESEARCH ON
25 MY PART, ALONG WITH OTHER RESEARCHERS, CONSULTANTS, ON

1 VARIOUS ISSUES INVOLVED IN REVIEWING THESE. I WROTE TWO
2 BOOKS AND A BUNCH OF CHAPTERS AND LECTURED A GOOD DEAL
3 ON HOW BEST TO GO ABOUT IDENTIFYING INDIVIDUALS FOR ADHD
4 UNDER THE ADA, AND HOW BEST TO GO ABOUT REVIEWING THAT
5 DOCUMENTATION.

6 Q. AND JUST TO CIRCLE BACK, ARE THERE ANY OTHER
7 ENTITIES, JUST A COUPLE OF EXAMPLES FROM WHOM YOU HAVE
8 REVIEWED TESTING ACCOMMODATION REQUESTS BESIDES NBME?

9 A. YES, THERE HAVE BEEN MANY AND CONTINUE TO BE.
10 MOST OF THEM ARE LARGER DISTRICTS, NEW YORK, KENTUCKY,
11 CALIFORNIA, NORTH CAROLINA, AND A HOST OF OTHERS.

12 I HAVE DONE, ALSO, REVIEWS FOR OTHER
13 ENTITIES, THE PROFESSIONAL ENTITIES, OSTEOPATHIC
14 MEDICINE BEING ONE OF THEM.

15 Q. AND THROUGH THAT WORK, REVIEWING REQUESTS AS AN
16 EXTERNAL REVIEWER, HAVE YOU BECOME FAMILIAR WITH THE
17 TYPES AND EXTENT OF RECORDS THAT INDIVIDUALS SEEKING
18 ACCOMMODATIONS HAVE SUBMITTED TO TESTING ENTITIES TO
19 SUPPORT REQUESTS FOR TESTING ACCOMMODATIONS?

20 A. I HAVE.

21 MS. MEW: YOUR HONOR, WE OFFER DR. GORDON
22 AS AN EXPERT IN ADHD AND ADHD ASSESSMENTS, ANXIETY, AS
23 WELL AS DOCUMENTING AND REVIEWING ACCOMMODATION REQUESTS
24 UNDER THE ADA?

25 THE COURT: DR. KITCHENS, ANY --

1 DR. KITCHENS: NO OBJECTION, YOUR HONOR.

2 THE COURT: OBJECTION. ALL RIGHT.

3 TESTIMONY WILL BE HEARD.

4 BY MS. MEW:

5 Q. DR. GORDON, WHAT IS THE DIAGNOSTIC AND
6 STATISTICAL MANUAL OF MENTAL DISORDERS OR DSM?

7 A. IT'S THE LISTING OF CRITERIA FOR ALL OF THE
8 MENTAL DISORDERS THAT HAVE BEEN IDENTIFIED IN CHILDREN,
9 ADOLESCENTS, AND ADULTS.

10 Q. HOW DO YOU GO ABOUT IDENTIFYING ADHD, ACCORDING
11 TO THE DSM?

12 A. ACCORDING TO THE DSM, THE PROCESS IS AS FOLLOWS:

13 FIRST, THE SYMPTOMS NEED TO BE PRESENT.
14 AS YOU KNOW THE SYMPTOMS HAD TO DO DO WITH INATTENTION,
15 PROBLEMS OF IMPULSE CONTROL, AND OVER ACTIVITY.

16 THERE ARE SUB TYPES OF THE DISORDER THAT
17 IDENTIFY MORE THE IMPULSE CONTROL VERSUS THE
18 INATTENTION, VERSUS BOTH TOGETHER, WHICH IS CALLED
19 COMBINED. SO FIRST, THE SYMPTOMS NEED TO BE THERE.

20 THE SYMPTOMS ARE NOT ENOUGH THOUGH,
21 BECAUSE THOSE SYMPTOMS ARE ALSO PREVALENT IN MANY MANY
22 OTHER PSYCHIATRIC DISORDERS, SO THE FOLLOWING THINGS
23 HAVE BEEN SHOWN TO BE SPECIFIC TO ADHD.

24 ONE, AN EARLY ONSET OF THE DISORDER. THE
25 DISORDER IS LISTED IN THE DSM AS NEURO DEVELOPMENT

1 DISORDER, A CHILDHOOD ONSET BRAIN-BASED DISORDER. AND
2 SO ONE OF THE THINGS THAT BECAME VERY CLEAR TO US, THAT
3 I HOPED MARQUED ADHD FROM ALL OF THE REASONS AT THE TIME
4 CHILDREN COULD BE RESTLESS AND INATTENTIVE, IS THAT THIS
5 DID NOT JUST SHOW UP ONE FINE DAY, THIS WAS PATTERN IN
6 THE YOUNGSTER'S BEHAVIOR SINCE VERY VERY EARLY ON.

7 INITIALLY, BEFORE THE AGE OF SEVEN, THAT
8 GOT STRETCHED A BIT TO 12 IN LATER EDITIONS OF THE DSM.
9 AND SO EARLY ONSET IS IMPORTANT AND THE REST OF THE
10 CRITERIA HAD TO DO WITH THREE FACTORS.

11 ONE, THAT IT WOULD BE ACROSS CONSISTENT
12 SITUATIONS. BECAUSE AFTER ALL, IF YOU HAVE A
13 BRAIN-BASED DISORDER THAT PRECLUDED YOU FROM MANAGING
14 ATTENTION, IT WOULD NOT START IN AND IN ONLY BE IN
15 READING AND NOT IN MATH, OR AT HOME AND NOT IN SCHOOL,
16 AND ET CETERA, THAT IT WOULD BE ACROSS THE CHILD'S
17 EXPERIENCE AND THEN THE ADULT'S EXPERIENCE REGARDING AS
18 LONG AS THERE WAS A DEMAND FOR ATTENTION, SELF-CONTROL.

19 AND THE NEXT TWO ARE AS FOLLOWS:

20 ONE, IT HAD TO BE RELATIVELY CONSISTENT
21 OVER TIME. AGAIN, YOU WOULDN'T EXPECT DISRUPTIONS WHERE
22 A CHILD WAS WILDLY ADHD IN THIRD GRADE AND NOT IN FOURTH
23 GRADE, ET CETERA. AGAIN, IF THIS IS HOW THE PERSON'S
24 BRAIN WORKS THEN YOU WOULD EXPECT SOME DEGREE OF
25 CONSISTENCY.

1 AND THE LAST CRITERIA, WHICH HAS BEEN SO
2 MUCH A PART OF MY RESEARCH, MY COLLEAGUES', ET CETERA,
3 IS TO ESTABLISH THAT THERE IS IMPAIRMENT AS A
4 CONSEQUENCE OF THOSE SYMPTOMS. AND SO, BECAUSE IT IS
5 NOT AT ALL UNUSUAL FOR SOMEBODY TO BE INATTENTIVE AT
6 TIMES IN THEIR LIFE, AT TIMES IN THE DAY, BASED ON
7 CERTAIN CIRCUMSTANCES THAT MIGHT BE CHALLENGING OR NOT
8 CHALLENGING.

9 BECAUSE OF THAT, WHAT WE HAVE ESTABLISHED
10 IS A SENSE OF WHAT IT MEANS TO BE IMPAIRED. AND THAT
11 GETS JUDGED DIFFERENTLY DEPENDING ON THE SITUATION BUT
12 THE CRITERIA IN THE DSM, AND VERY MUCH FOR RESEARCH
13 STUDIES THAT WE HAVE DONE AND OTHER RESEARCHERS HAVE
14 DONE, HAVE BEEN TO SHOW THAT THERE IS CLINICALLY
15 SIGNIFICANT IMPAIRMENT.

16 IN OTHER WORDS, THIS ISN'T JUST A
17 PERSONALITY TRAIT. SOME OF US ARE MORE ATTENTIVE THAN
18 OTHER, SOME OF US ARE MORE CONTAINED OR QUIETER,
19 WHATEVER, BUT PEOPLE DO WHAT THEY NEED TO DO. IF YOU
20 HAVE A DISORDER, YOU ARE DISORDERED. YOU KNOW, YOU ARE
21 NOT -- UNABLE TO MANAGE SITUATIONS THAN MOST OTHERS CAN
22 MANAGE AND THAT'S THE LAST LEG OF THE PIECE OF THIS, IS
23 THE INDICATION CLINICALLY SIGNIFICANT IMPAIRMENT.

24 Q. UNDER THE DSM, CAN YOU BASE A DIAGNOSIS OF ADHD
25 SOLELY ON AN INDIVIDUAL'S SELF-REPORT?

1 A. NO, YOU CAN'T AND THE CRITERIA ARE QUITE CLEAR
2 ON THAT.

3 Q. WHAT DOES THE DSM REQUIRE?

4 A. IT REQUIRES DOCUMENTATION. WHAT WE USED TO CALL
5 IT IS MULTI MODAL ASSESSMENT. THE DSM REQUIRES THAT
6 THERE BE EVIDENCE NOT JUST FROM ONE TEACHER, NOT JUST
7 FROM ONE PARENT, NOT JUST IN THE CASE OF ADULTS, FROM
8 THE CLIENT HIM OR HERSELF.

9 IT REQUIRES EVIDENCE FROM HISTORY AND
10 FROM EXTERNAL CONTEMPORANEOUS SOURCES THE SYMPTOMS ARE
11 THERE AND THAT ARE IMPAIRING.

12 Q. FROM YOUR EXPERIENCE OVER THE YEARS HAVE YOU
13 SEEN OR DO YOU KNOW, IS IT POSSIBLE THAT SOMEONE COULD
14 RECEIVE A DIAGNOSE OF ADHD EVEN IF HE OR SHE DOES NOT
15 MEET THE DIAGNOSTIC CRITERIA IN THE DSM?

16 A. YES.

17 Q. IS ADHD ANY TYPE OF READING DISORDER?

18 A. NO. A READING DISORDER IS A SEPARATE SITUATION,
19 SEPARATE DISORDER. ACTUALLY THERE IS NO ESTABLISHED
20 LINK BETWEEN ADHD AND A READING DISORDER. YOU CAN HAVE
21 ADHD AND HAVE A READING DISORDER BUT YOU CAN ALSO HAVE A
22 READING DISORDER AND NOT BE ADHD.

23 THERE IS NO FORMAL LINK SUCH THAT YOU
24 COULD SAY, BECAUSE YOU HAVE ADHD YOU ARE GOING TO HAVE A
25 READING DISORDER. THERE MIGHT BE A HIGHER LIKELIHOOD

1 BECAUSE OF THE TWO TOGETHER BECAUSE PSYCHIATRIC
2 DISORDERS TEND TO CO-EXIST, BUT NO, THE FACT THAT
3 SOMEBODY HAS ADHD DOES NOT IN ANY WAY DICTATE THAT THEY
4 ARE GOING TO HAVE A READING DISORDER, OR VICE VERSA.

5 Q. WHEN YOU ARE REVIEWING REQUESTS FOR TESTING
6 ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES
7 ACT, WHAT STANDARD ARE YOU APPLYING?

8 A. I AM APPLYING THE STANDARD OF THE DSM TO BEGIN
9 WITH. SO I HAVE TWO JOBS WHEN THEY SEND ME THIS
10 INFORMATION. ONE, DOES THE INFORMATION THAT IS PROVIDED
11 SUPPORT THE DIAGNOSIS? IN OTHER WORDS, IS THERE
12 EVIDENCE FROM BEYOND SELF-REPORT OF EARLY APPEARING
13 CONSISTENT IMPAIRING SYMPTOMS.

14 AND THEN FOR THESE EVALUATIONS I NEED TO
15 LOOK FOR FUNCTIONAL LIMITATIONS, AND ESSENTIALLY
16 ESTABLISH WHETHER THE PERSON RELATIVE TO MOST OTHER
17 PEOPLE IN THE GENERAL POPULATION ARE UNABLE TO DO WHAT
18 MOST PEOPLE CAN DO.

19 Q. DID YOU REVIEW DR. KITCHENS' 2022 REQUEST FOR
20 ACCOMMODATIONS ON THE USMLE IN CONNECTION WITH THIS
21 LITIGATION?

22 A. I DID.

23 Q. AND JUST TO BE CLEAR YOU ARE NOT AN EXTERNAL
24 REVIEWER OF THE REQUEST WHEN IT CAME IN IN THE ORDINARY
25 COURSE BACK IN 2022?

1 A. THAT'S CORRECT.

2 Q. OKAY. I'M GOING TO PULL UP EXHIBIT PX 2. AND I
3 WILL REPRESENT TO YOU THAT THIS IS DR. KITCHENS' FIRST
4 REQUEST FOR TESTING ACCOMMODATIONS THAT WAS SENT TO THE
5 NBME.

6 SO I AM GOING TO ASK YOU SOME QUESTIONS
7 FOCUSED ON ADHD. IF WE CAN TO GO PAGES 4, AND 5.

8 UNFORTUNATELY WE CAN ONLY DO ONE AT A
9 TIME. BUT IF WE LOOK DOWN HERE TO THE SECTION E, IN THE
10 ACCOMMODATION HISTORY SECTION, WHAT DOES THIS -- WE'LL
11 START HERE AT E 1, STANDARDIZED EXAMINATIONS.

12 WHAT DOES THIS INFORMATION TELL YOU AS
13 YOU ARE REVIEWING THIS REQUEST?

14 A. THAT ALL THE WAY UP, AT LEAST THROUGH ENTRY INTO
15 MEDICAL SCHOOL, HE NEVER REQUIRED ACCOMMODATIONS TO BE
16 ABLE TO PROGRESS. SO THIS IS THE FIRST THING WE ALL
17 LOOK AT TO SEE IF THERE IS A HISTORY OF ACCOMMODATIONS,
18 SOMEBODY WHO HAS BEEN IMPAIRED BY A DISORDER HAS --
19 WOULD HAVE NEEDED TO HAVE SOME ACCOMMODATIONS ALONG THE
20 WAY, ESPECIALLY AS IT GOT INTO -- TOWARDS MEDICAL SCHOOL
21 AND SUCH.

22 SO I WOULD LOOK AT THAT AND SAY, GEEZ
23 THERE IS NO ACCOMMODATIONS HERE, SO THERE IS NO HISTORY
24 TO CONSIDER OF THAT.

25 Q. AND THEN WE WILL GO TO PAGE 5, OF EXHIBIT PX 2.

1 AND WE CAN PROBABLY PULL OUT ON THIS.

2 AND LOOKING COLLECTIVELY AT SECTIONS E 2,
3 AND E 3, WHAT DOES THE REST OF THIS ACCOMMODATION
4 HISTORY OF THE FORM TELL YOU WHEN YOU REVIEW THIS 2022
5 REQUEST?

6 A. IT TELLS ME THAT HE DOES NOT HAVE A HISTORY OF
7 HAVING RECEIVED FORMAL ACCOMMODATIONS.

8 Q. IF YOU TURN NOW TO THE PAGE BEGINNING, "TO WHOM
9 IT MAY CONCERN," WHICH WE ARE ALL -- THIS IS DR.
10 KITCHENS' PERSONAL STATEMENT.

11 WHAT DOES THIS LETTER TELL YOU REGARDING
12 DR. KITCHENS' ALLEGED DIAGNOSIS OF ADHD?

13 A. IT DOES NOT TELL ME ANYTHING ABOUT HIS HISTORY,
14 WHY HE DIDN'T GET ACCOMMODATIONS OR NEED ACCOMMODATIONS.

15 IT DOES NOT TELL ME MUCH ABOUT THE CASE
16 HE IS BUILDING FOR HIMSELF FOR WHY HE FEELS HE SHOULD
17 RECEIVE ACCOMMODATIONS.

18 Q. IF WE FOCUS IN, WE'LL TRY TO -- IN THAT SECOND
19 PARAGRAPH, SECOND TO LAST SENTENCE == OH, NO, THIRD TO
20 LAST SENTENCE, THERE IS A REFERENCE TO "WHILE IN
21 UNIVERSITY I NEVER HAD THE NEED TO FILE AN
22 ACCOMMODATION" -- "I NEVER HAD THE NEED TO FILE AN
23 OFFICIAL DOCUMENTATION FOR MY SITUATION DUE TO MY
24 PROFESSOR'S WILLINGNESS TO TAKE ANY EXAMS ONE-ON-ONE
25 WITH EXTENDED TIME."

1 WHAT DO YOU DO WITH THAT INFORMATION AS
2 PART OF YOUR ANALYSIS?

3 A. WELL, LIKE -- WHAT I LOOK FOR IS WHETHER
4 SOMEBODY HAS NEEDED EXTRAORDINARY ACCOMMODATIONS, NOT
5 JUST THE KINDS OF ACCOMMODATIONS THAT WE PROFESSORS WILL
6 GIVE IN CERTAIN CIRCUMSTANCES FOR CERTAIN TESTS.

7 SOMEBODY WHO HAS A LONG TRACK RECORD OF
8 BEING IMPAIRED BY ADHD NEEDS FAR MORE THAN JUST
9 UNOFFICIAL HELP FROM SOME OF THE PROFESSORS. THEY NEED
10 A GOOD DEAL OF SUPPORT AND RESOURCES TO BE ABLE TO
11 HANDLE THE SITUATIONS THAT REQUIRE THEM TO PAY
12 ATTENTION.

13 Q. TURNING TO THE NEXT PAGE, WHICH IS AN
14 APRIL 22ND, 2020, LETTER FROM DOCTOR GORY KHAN.

15 WHAT DOES THIS DOCUMENT TELL BUT DR.
16 KITCHENS' CLAIMED DIAGNOSIS OF ADHD WHEN YOU ARE
17 REVIEWING THIS REQUEST?

18 A. DOESN'T MENTION ADHD. IT JUST SAYS THAT HE HAS
19 SIGNIFICANT ANXIETY. SO THIS WOULD INDICATE TO ME THAT
20 THAT IF THERE IS SOMETHING GOING ON PERHAPS IT MIGHT
21 HAVE MORE TO DO WITH ANXIETY. I WOULD NOT KNOW. BUT
22 THERE IS NO EVEN MENTION OF ADHD AT ALL.

23 I WOULD LOOK BACK TO SEE TO SEE WHETHER
24 THE PERSON ACTUALLY CLAIMED HAVING ANXIETY, WHICH IN
25 THIS CASE HE CLAIMED HE HAD TEST ANXIETY, BUT NO, THIS

1 DOES NOT TELL ME ANYTHING ABOUT ADHD.

2 Q. DOES THIS PAGE TELL YOU ANYTHING ABOUT THE
3 EXISTENCE OR EXTENT OF ANY FUNCTIONAL LIMITATIONS?

4 A. NO, IT DOES NOT.

5 Q. TURNING TO THE NEXT PAGE. THIS, I WILL JUST
6 REPRESENT, IS PAGE 9, FOR THE RECORD, FROM AN
7 OCTOBER 5TH, 2020, OFFICE VISIT TO NORTH WESTERN
8 MEDICINE DERMATOLOGY.

9 WHAT DID THIS PAGE YOU ABOUT THE CLAIMED
10 ADHD DIAGNOSIS?

11 A. WELL, IT'S FROM A DERMATOLOGY APPOINTMENT, SO
12 NOT MUCH. HE HAS THE PERSON WRITING THE RECORD, THE
13 PROVIDER, INDICATED THAT THERE IS A HISTORICAL DIAGNOSIS
14 OF ADHD. THAT WOULD JUST BE FROM DR. KITCHENS'
15 SELF-REPORT.

16 THE REST OF IT, HE WAS -- IT JUST SEEMS
17 LIKE A PROVIDER WHO IS INDICATING THAT THERE WAS SOME
18 REPORT OF ADHD BUT THERE IS NO INFORMATION HERE ABOUT
19 THE HISTORY OR ANY OF THE OTHER ELEMENTS THAT WE WOULD
20 NEED TO SEE.

21 Q. WHAT DOES THIS PAGE TELL YOU ABOUT THE -- ANY
22 EXISTENCE OR EXTENT OF FUNCTIONAL LIMITATIONS?

23 A. NOTHING.

24 Q. IF YOU LOOK AT THE BOTTOM OF THE PAGE, THERE IS
25 SOME PRESCRIPTION INFORMATION CIRCLED.

1 WHAT DOES THE INFORMATION REGARDING
2 CURRENT OUT-PATIENT MEDICATIONS TELL YOU ABOUT THE
3 EXISTENCE AND EXTENT OF ANY FUNCTIONAL IMPAIRMENT?

4 A. NOTHING.

5 Q. TURNING TO THE NEXT TWO PAGES. FOR THE RECORD
6 THESE ARE DOCUMENTS THAT HAVE THE DATE MAY 25TH, 2018,
7 IN THE FOOTER.

8 WHAT DO THESE TWO PAGES TELL US ABOUT DR.
9 KITCHENS' CLAIMED ADHD DIAGNOSIS?

10 A. NOTHING AT ALL.

11 Q. WHY IS THAT?

12 A. BECAUSE ESSENTIALLY THE PHYSICIAN IS -- HEARD
13 THE CONCERNS AND IS JUST LOOKING TO REFER OUT FOR AN
14 EVALUATION AND TREATMENT.

15 THE OTHER THING I WOULD BE VERY AWARE OF
16 IS THAT THE POTENTIAL DIAGNOSIS OF ADHD IS UNSPECIFIED
17 TYPE, AND AS SOON AS0 ANY OF US SEE UNSPECIFIED TYPE, WE
18 KNOW THAT EVEN IF SHE FELT THAT THIS WAS ADHD, IT WOULD
19 BE OF A TYPE THAT DID NOT MEET FULL CRITERIA. THAT'S
20 WHAT UNSPECIFIED TYPE, IT'S A WAY OF SAYING WELL, IT
21 COULD BE ADHD BUT THERE DOESN'T SEEM TO BE THE NUMBER OF
22 SYMPTOMS OR THE DEGREE OF IMPAIRMENT REQUIRED AND SO
23 THAT WOULD, IF ANYTHING, SUGGEST THAT THIS MAY NOT BE A
24 PROBLEM THAT IS SUBSTANTIAL.

25 Q. WHAT DO THOSE TWO PAGES DATED MAY 25TH, 2018,

1 TELL YOU ABOUT THE NATURE AND EXTENT OF ANY FUNCTIONAL
2 LIMITATIONS?

3 A. THEY REALLY DON'T SAY ANYTHING ABOUT FUNCTIONAL
4 LIMITATIONS.

5 Q. IF WE TURN TO THE NEXT TWO PAGES. AND AGAIN FOR
6 THE RECORD THESE -- THIS IS THE REPORT FROM JULY 26TH,
7 2017.

8 WHAT DO THESE PAGES TELL YOU ABOUT DR.
9 KITCHENS' CLAIMED ADHD DIAGNOSIS, AND LET'S STAY ON THE
10 FIRST PAGE, FIRST.

11 DR. GORDON, TELL ME IF YOU NEED TO US
12 EXPAND?

13 A. OH, THERE YOU GO. THAT'S FINE. THANK YOU.
14 THIS DOESN'T PROVIDE ANY INFORMATION
15 ABOUT HIS FUNCTIONAL LIMITATIONS OTHER THAN HE IS
16 FOCUSING BETTER.

17 Q. IF WE TURN TO THE NEXT PAGE.

18 WHAT DOES THIS INFORMATION TELL YOU ABOUT
19 DR. KITCHENS' CLAIMED ADHD DIAGNOSIS?

20 A. NOTHING. IT HAS NOTHING TO DO WITH HIS HISTORY
21 OR SYMPTOMS OR PERVASIVENESS OR ANYTHING LIKE THAT.

22 Q. WHAT IS IT TELLING YOU?

23 A. IT IS TELLING ME THAT THE PHYSICIAN FELT HE
24 SHOULD BE REFERRED OUT, AND IT'S ALSO TELLING ME THAT IT
25 SEEMS LIKE HE WAS COMING FOR MEDICATION SO HE WOULD HAVE

1 WHEN HE WENT TO MEDICAL SCHOOL IN POLAND. DOESN'T LOOK
2 LIKE SHE WAS COMFORTABLE DOING THAT, AND THAT'S WHAT IT
3 SAYS.

4 Q. TO TAKE IT AS A WHOLE, WE HAVE BEEN THROUGH THE
5 MEDICAL RECORDS THAT WERE THE PART OF THIS REQUEST.

6 DO THE MEDICAL RECORDS SUBMITTED BY DR.
7 KITCHENS, WITH HIS 2022 ACCOMMODATION REQUEST,
8 SUBSTANTIATE AN ADHD DIAGNOSIS?

9 A. IT WOULD NOT.

10 Q. DO THEY PROVIDE ANY INFORMATION ABOUT DR.
11 KITCHENS' FUNCTIONAL LIMITATIONS?

12 A. NO, IT DOES NOT PROVIDE ANY INFORMATION ABOUT
13 FUNCTIONAL LIMITATIONS.

14 Q. IF WE WILL CLICK AHEAD TO THE NEXT PAGE. THIS,
15 FOR THE RECORD, IS AN OCTOBER 27TH, 2020, E-MAIL
16 CONFIRMATION FROM PROMETRIC.

17 AND IF WE SCROLL DOWN JUST A LITTLE BIT,
18 IT SAYS FOR THE COMPREHENSIVE SCIENCE EXAMINATION, UNDER
19 TEST ACCOMMODATIONS, IT SAYS "EXTENDED TIME."

20 SO WHAT DOES THIS DOCUMENT TELL YOU IN
21 YOUR ANALYSIS OF THE 2022 REQUEST, DR. GORDON?

22 A. AGAIN, PROVIDES NO INFORMATION ABOUT HIS
23 FUNCTIONING. IT JUST SAYS THAT ON THIS ONE TEST HE
24 RECEIVED EXTENDED TIME, I SUPPOSE FROM HIS MEDICAL
25 SCHOOL.

1 Q. IN THE INTEREST OF COMPLETENESS, I WILL
2 REPRESENT TO YOU THAT NBME REQUESTED THAT DR. KITCHENS
3 SUBMIT HIS CBSE SCORE REPORT AS PART OF HIS REQUEST.
4 AND WE HAVE PULLED OUT EXHIBIT PX 52, WHICH IS THE SCORE
5 REPORT -- AND YOU CAN KIND OF SCROLL OUT ON THIS --
6 WHICH IS THE SCORE REPORT FOR THE DECEMBER 10TH, 2020,
7 CBSE.

8 SO WHAT DOES THIS DOCUMENT TELL YOU AS
9 YOU ARE ASSESSING THE 2022 ACCOMMODATION REQUEST?

10 A. IT WOULD TELL ME THAT EVEN WITH EXTENDED TIME HE
11 STILL HAD TROUBLE WITH THE TEST.

12 Q. I WILL ALSO REPRESENT TO YOU THAT DR. KITCHENS
13 SUBMITTED ANOTHER REQUEST FOR ACCOMMODATIONS, IN
14 AUGUST 2022, WITHOUT ANY NEW SUPPORTING DOCUMENTATION.

15 SO CONSIDERED AS A WHOLE THE DOCUMENTS
16 THAT WE HAVE JUST BEEN THROUGH, DO THE DOCUMENTS THAT
17 DR. KITCHENS SUBMITTED TO NBME IN SUPPORT OF HIS 2022
18 ACCOMMODATIONS REQUEST TELL YOU ANYTHING ABOUT HIS
19 CLAIMED ADHD?

20 A. NO.

21 Q. DOES IT TELL YOU ABOUT WHETHER HIS CLAIMED ADHD
22 AFFECTS HIS ABILITY TO CONCENTRATE?

23 A. NO.

24 Q. DOES IT TELL YOU ANYTHING ABOUT WHETHER HIS
25 CLAIMED ADHD AFFECTS HIS ABILITY TO THINK?

1 A. NO, IT DOESN'T.

2 Q. DOES IT TELL YOU ANYTHING ABOUT HOW HIS CLAIMED
3 ADHD AFFECTS HIS ABILITY TO READ?

4 A. NO.

5 Q. DOES IT TELL YOU ANYTHING ABOUT HOW HIS CLAIMED
6 ADHD AFFECTS ANY OTHER SKILL THAT DR. KITCHENS WOULD
7 HAVE TO USE WHEN TAKING AN EXAM LIKE THE USMLE TO THE
8 EXTENT IT RISES TO THE LEVEL OF A MAJOR LIFE ACTIVITY?

9 A. NO, IT DOESN'T.

10 Q. DOES THE DOCUMENTATION PROVIDE ANY INFORMATION
11 THAT WOULD SHOW THAT DR. KITCHENS IS SUBSTANTIALLY
12 LIMITED IN ANY MAJOR LIFE ACTIVITY RELEVANT TO TAKING
13 THE USMLE COMPARED TO MOST PEOPLE?

14 A. NO, IT DOES NOT.

15 Q. DO THE DOCUMENTS THAT DR. KITCHENS SUBMITTED TO
16 NBME, IN 2022, DEMONSTRATE THAT DR. KITCHENS NEEDS EXTRA
17 TIME, EXTRA BREAKS, OR OTHER ACCOMMODATIONS IN ORDER TO
18 TAKE THE STEP EXAMS IN AN ACCESSIBLE MANNER?

19 A. NO, IT DOESN'T.

20 Q. AND IN YOUR OPINION, WAS THERE ANY BASIS FOR
21 NBME TO PROVIDE DR. KITCHENS ANY DISABILITY BASED
22 TESTING ACCOMMODATIONS BASED ON THE DOCUMENTATION WE
23 JUST REVIEWED?

24 A. I DON'T BELIEVE THEY COULD DECIDE BECAUSE THERE
25 WAS NOTHING TO REVIEW THAT WAS RELEVANT TO THAT

1 DECISION.

2 Q. LET'S SHIFT TO LOOKING AT SOME ADDITIONAL
3 MEDICAL AND EDUCATIONAL RECORDS THAT DR. KITCHENS HAS
4 RELIED ON IN THE COURSE OF THIS LAWSUIT BUT, JUST FOR
5 CLARITY, WERE NOT PART OF THE DOCUMENTATION HE SUBMITTED
6 TO NBME IN 2022.

7 SO IF YOU -- WE WILL TURN TO EXHIBIT PX
8 5. AND WE MIGHT NEED TO SCROLL IN HERE A LITTLE BIT.

9 A. A BIT MORE PLEASE? THERE YOU GO. THANK YOU.

10 Q. WHAT DOES THIS DOCUMENT APPEAR TO BE, DR.
11 GORDON?

12 A. THIS APPEARS TO BE A DOCUMENT FROM THE
13 DISABILITY SERVICES AT DR. KITCHENS' COLLEGE --
14 (UNINTELLIGIBLE) -- AND DISCUSS HIS CIRCUMSTANCES.

15 Q. DR. GORDON, I THINK YOUR SCREEN FROZE. IF YOU
16 COULD FOR THE RECORD REPEAT YOUR ANSWER TO THE BEST OF
17 YOUR ABILITY?

18 A. I AM SORRY. THIS LOOKS LIKE THE REPORT OF
19 PROGRESS NOTE WRITTEN BY AN LD COORDINATOR AT DR.
20 KITCHENS' COLLEGE.

21 Q. AND WHAT DOES THIS DOCUMENT TELL YOU RELATIVE TO
22 THE ISSUES THAT YOU ARE REVIEWING?

23 A. WELL, IT TELLS ME NOT A WHOLE LOT BUT HE HAD --
24 BUT THE FACT THAT HE SAID HE HAD NO PROBLEMS WITH
25 FUNCTIONING UP UNTIL RECENTLY, A BELL DOES GO OFF

1 BECAUSE AGAIN, YOU WOULD NOT EXPECT SOMEBODY WHO HAD A
2 DISABILITY OF THIS SORT PARTICULARLY TO HAVE NO PROBLEMS
3 UNTIL THEY GOT TO COLLEGE. THERE WOULD BE A HISTORY OF
4 THAT.

5 HE WAS NOT ON ACADEMIC PROBATION. HAD A
6 FEW BAD GRADES, BUT THAT HE DID NOT WANT TO
7 ACCOMMODATIONS, AGAIN, IT SPEAKS TO THE FACT THAT
8 PERHAPS WHATEVER WAS GOING ON FOR HIM AS A STUDENT WAS
9 NOT SO SERIOUS THAT HE NEEDED -- FELT HE NEEDED
10 ACCOMMODATIONS OR SUPPORT.

11 IT REALLY LOOKED LIKE HE WANTED
12 MEDICATION, WHICH OF COURSE A LOT OF COLLEGE STUDENTS DO
13 LOOK FOR TO BE ABLE TO FOCUS BETTER.

14 Q. I AM GOING TO PULL UP TWO DOCUMENTS, PX 9, AND
15 PX 6. AND LET'S LOOK AT PX 6 FIRST. I THINK YOU WILL
16 NEED TO EXPAND ENOUGH TO READ AND WE CAN SCROLL DOWN.
17 AND IF YOU WILL JUST SCROLL UP FOR A SECOND.

18 SO IN PX 6, THIS IS BEREA COLLEGE HEALTH
19 SERVICE NOTE, DATE JANUARY 11TH, 2013. AND IF YOU
20 SCROLL DOWN TO THE SUBJECTIVE STATEMENT.

21 WHAT DOES THIS SUBJECTIVE STATEMENT TELL
22 YOU, DR. GORDON, RELATIVE TO THE ISSUES YOU ARE
23 ADDRESSING?

24 A. NOT MUCH. IT SOUNDS LIKE HE IS CONCERNED ABOUT
25 HIS FUNCTIONING -- HIS PERFORMANCE ON TESTS. THERE IS

1 NO REASON TO BELIEVE WHY SOMEBODY WITH ADHD WOULD FIND
2 IT MORE DIFFICULT TO STUDY AT HOME. USUALLY OUR
3 PATIENTS HAVE TROUBLE WHEN THERE IS A LOT OF
4 DISTRACTIONS AROUND, AS IN CLASS, SO I WOULD LOOK AT
5 THAT AND JUST WONDER ABOUT IT.

6 BUT AGAIN, IT DOESN'T INDICATE THAT HE IS
7 PARTICULARLY IMPAIRED. IT JUST INDICATES THAT, I GUESS
8 LIKE A LOT OF PEOPLE, THEY FOCUS BETTER IN SOME
9 CIRCUMSTANCES THAN OTHERS. AND MOST OF US, A LOT OF US,
10 DO CONCERN OURSELVES WITH HOW WELL WE PERFORM ON TESTS.

11 Q. UNDER ASSESSMENTS, DOES THIS SHOW AN ADHA
12 DIAGNOSIS?

13 A. YES.

14 Q. IF WE GO TO PX 9 -- OH, CAN WE GO BACK TO PX 6
15 FOR JUST A SECOND?

16 I JUST WANT TO -- IS THAT ALSO THE CASE
17 DR. GORDON, WHEN IT SAYS PROBABLE, IS IT STILL YOUR
18 READING THAT'S ALL -- THAT STILL SHOWS AN ADHA
19 DIAGNOSIS?

20 A. WELL, FAIR ENOUGH. I MEAN, THERE IS ONE WRITTEN
21 THERE. IT'S CLEARLY A PROBABLE -- I AM LOSING THE WORD
22 RIGHT NOW, BUT A POTENTIAL DIAGNOSIS.

23 Q. OKAY. AND THEN, LET'S --

24 A. IT'S VERY MUCH LIKE WHAT YOU HAD BEFORE,
25 EVALUATE AND TREAT, BUT THERE IS A DIAGNOSIS THERE.

1 Q. OKAY. IF YOU LOOK AT PX 9, AND WE WILL -- THIS
2 IS AN AUGUST 5TH, 2013, RECORD FROM BEREA COLLEGE HEALTH
3 SERVICE.

4 IF WE LOOK AT THE SUBJECTIVE REPORT, WHAT
5 DOES THIS TELL YOU RELEVANT TO THE ISSUES THAT YOU ARE
6 REVIEWING?

7 A. WELL, I DEFINITELY TAKE NOTE OF THAT LINE THERE
8 BECAUSE THIS WOULD LOOK TO ME TO BE A STUDENT WHO REALLY
9 WAS -- WANTED TO MAXIMIZE HIS PERFORMANCE, IN THIS CASE
10 ON THE MCAT, THAT HE WAS LOOKING FOR MEDICATIONS REALLY
11 TO DO HIS WELL AS HE COULD DO ON AN EXAM.

12 YOU HAVE TO UNDERSTAND THAT THAT IS
13 DIFFERENT THAN WHAT WE SEE WITH OUR ADHD PATIENTS. THEY
14 NEED ALL THE HELP THAT THEY CAN GET. THEY ARE NOT
15 LOOKING SO MUCH TO MAXIMIZE OR OPTIMIZE THEIR
16 PERFORMANCE, THEY ARE LOOKING JUST TO BE ABLE TO ACCESS
17 -- TO BE ABLE TO DO WELL AT ALL ON THE TEST.

18 SO IT'S THE DIFFERENCE BETWEEN JUST
19 TRYING TO COPE WITH THE TEST AND BEING ABLE TO PERFORM
20 ON IT, AS OPPOSED TO WANTING TO TAKE THE TEST AND GET AS
21 GOOD AS GRADE AS YOU CAN GET.

22 Q. AND SO I UNDERSTAND YOUR TESTIMONY THAT IS
23 WHETHER THE PRIOR DOCUMENT OR THIS DOCUMENT, THEY DO
24 SHOW AN ADHA DIAGNOSIS; CORRECT?

25 A. IT DOES.

1 Q. DOES ANYTHING IN THESE DOCUMENTS REFLECT AN
2 APPROPRIATE ASSESSMENT FOR ADHD?

3 A. NO, THERE IS NONE LISTED.

4 Q. SO THAT WAS GOING TO BE MY NEXT QUESTION:

5 DO EITHER OF THE DOCUMENTS SHOW THE BASIS
6 FOR THE DIAGNOSIS?

7 A. NO, THEY DON'T.

8 Q. DO THE DOCUMENTS DEMONSTRATE THE NATURE AND
9 EXTENT OF ANY FUNCTIONAL LIMITATIONS?

10 A. NO, THEY DON'T.

11 Q. I'M GOING TO PULL UP EXHIBIT DX 7. THIS IS A
12 GROUP OF MEDICAL RECORDS THAT DR. KITCHENS OBTAINED FROM
13 THE WHITE HOUSE CLINICS. WE ARE GOING TO TURN TO THE
14 JULY 8TH, 2014, RECORD THAT STARTS AT PAGE 14, IT DOES
15 NOT START -- GO ONE MORE PAGE, PLEASE.

16 I AM LOOKING FOR MK 23. AND THEN -- SO
17 LET ME IDENTIFY THIS.

18 THIS IS A JULY 8TH, 2014, OFFICE VISIT
19 NOTE. AND NOW WE CAN EXPAND. AND WHAT I'M GOING TO DO
20 IS LOOK THROUGH THIS REPORT -- CLICK THROUGH SO YOU CAN
21 SEE WHAT IS THERE.

22 DR. GORDON, DOES ANYTHING IN THIS RECORD
23 SUGGEST THAT NURSE PRACTITIONER AMBROSE DID HER OWN ADHD
24 ASSESSMENT OF DR. KITCHENS IN 2014?

25 A. NO.

1 Q. AND NOW IF WE CLICK BACK TO -- IT WILL BE THE
2 PAGE BATES NUMBERED MK 00019. THIS IS A FEBRUARY 15TH,
3 2016, RECORD FOR AN OFFICE VISIT WITH VICKI HACKMAN
4 M.D., AND IF WE KIND OF SCROLL DOWN THIS PAGE...

5 DOES ANYTHING IN THIS RECORD SHOW ANY
6 KIND OF ASSESSMENT FOR ADHD BY DR. HACKMAN IN
7 FEBRUARY OF 2016?

8 A. IT DOES NOT.

9 Q. AND IF WE GO BACK TO THE LAST PAGE, BATES
10 NUMBERED MK 22.

11 WHAT DOES THIS PAGE SHOW REGARDING
12 MEDICATIONS ADDED, CONTINUED, OR STOPPED DURING THIS
13 VISIT?

14 A. WELL, IT INDICATES THAT IT BEEN STOPPED PRIOR TO
15 THIS APPOINTMENT.

16 Q. THAT WHAT HAD BEEN STOPPED?

17 A. I'M SORRY, THAT THE MEDICATION HAD BEEN STOPPED
18 PRIOR TO THIS APPOINTMENT.

19 Q. WHY DO YOU THINK --

20 A. IN THE YEAR PRIOR.

21 Q. IN THE YEAR PRIOR?

22 A. IT SAID STOPPED 2-15, AND 2006 -- OH, I'M SORRY
23 IS THAT A SIX OR A FIVE?

24 Q. LET'S?

25 A. IT'S A SIX. I'M SORRY. OKAY. IT LOOKS LIKE

1 THE MEDICATION HAD BEEN STOPPED. SHE STOPPED THE
2 MEDICATION.

3 Q. AND THEN WE WILL GO UP TO STILL IN DX 16, THE
4 PAGE BATES NUMBERED MK 16.

5 DR. KITCHENS: I'M SORRY, MS. MEW, I
6 DON'T MEAN TO INTERRUPT YOU. WHAT WAS THE BATES STAMP
7 FOR THE LAST PAGE YOU WERE JUST ON, PLEASE?

8 MS. MEW: SURE. I'LL GO BACK.

9 DR. KITCHENS: THANK YOU.

10 MS. MEW: MK 22.

11 DR. KITCHENS: THANK YOU.

12 MS. MEW: NOW WE ARE GOING TO GO TO MK
13 16.

14 BY MS. MEW:

15 Q. THIS IS A RECORD OF A JULY 26, 2017, OFFICE
16 VISIT WITH DR. HACKMAN.

17 AND LOOKING UNDER "HISTORY OF PRESENT
18 ILLNESS," WHAT DOES DR. KITCHENS PRESENTING FOR,
19 ACCORDING TO THIS RECORD?

20 A. A MED REFILL.

21 Q. IF WE GO DOWN TO THE ASSESSMENT PLAN. AND I
22 THINK KEEP SCROLLING DOWN, ACTUALLY BELOW TO -- WE WILL
23 COME BACK TO THIS. KEEP SCROLLING. OKAY. I THINK
24 THAT'S IT. SO LET'S GO -- I THINK THAT'S THE END.

25 DOES IT APPEAR FROM THIS RECORD THAT DR.

1 HACKMAN PRESCRIBED ANY MEDICATION FOR DR. KITCHENS AS
2 PART OF THIS VISIT?

3 A. NO.

4 Q. DOES IT APPEAR THAT DR. HACKMAN DIAGNOSED DR.
5 KITCHENS WITH ADHD?

6 A. NO.

7 Q. WHY DO YOU SAY THAT? I SEE THE ATTENTION AND
8 CONCENTRATION DEFICIT IS LISTED THERE?

9 A. BECAUSE SHE PUTS EVALUATE AND TREAT, NEEDS
10 EVALUATION. I THINK SHE MEANT EVALUATION FOR ADHD. SO
11 SHE CLEARLY DIDN'T FEEL COMFORTABLE DOING THAT ON HER
12 OWN AND REFERRED HIM OUT.

13 AND SHE SAYS THAT, I TOLD HIM I COULD NOT
14 DO THAT BUT I COULD REFER HIM TO A SPECIALIST FOR AN
15 EVALUATION AND GET THEIR OPINION ABOUT HIM NEEDING THE
16 MEDICATION.

17 Q. AND THEN IF WE GO BACK TO -- I THINK IT'S PAGE 4
18 OF THIS DOCUMENT. THIS IS A REPORT OF A MAY 25TH, 2018,
19 VISIT WITH WHITE HOUSE CLINICS AND DR. HACKMAN. IF WE
20 SCROLL DOWN. KEEP GOING. OKAY. SO WE WILL STOP HERE,
21 WHERE -- AT ASSESSMENT AND PLAN.

22 DID DR. HACKMAN DIAGNOSE DR. KITCHENS
23 WITH ADHD AT THIS OFFICE VISIT?

24 A. NO.

25 Q. WHAT IS THE REFERENCE TO ATTENTION

1 DEFICIT-HYPERACTIVITY DISORDER -- WE HAVE ACTUALLY
2 ALREADY COVERED THIS, BUT JUST FOR THE RECORD WHAT IS THE
3 REFERENCE TO ATTENTION DEFICIT-HYPERACTIVITY DISORDER
4 UNSPECIFIED TYPE?

5 A. WELL, IT'S WHAT A PROVIDER WOULD DO TO INDICATE
6 THAT THAT IS AN AREA OF CONCERN THAT SHOULD BE EVALUATED
7 AND TREATED.

8 Q. AND THEN IF YOU LOOK DOWN UNDER "MEDICATIONS,"
9 DID DR. HACKMAN PRESCRIBE ANY ADHD MEDICATION AT THIS
10 VISIT?

11 A. NO.

12 Q. LOOKING AT JUST A FEW MORE RECENT RECORDS AND
13 FOCUSING ON ONES THAT HAVE BEEN ADMITTED INTO EVIDENCE,
14 I AM GOING TO PULL UP EXHIBIT PX 37. THIS IS A
15 SEPTEMBER 22ND, 2022, PROGRESS NOTE FOR A VISIT WITH
16 NURSE PRACTITIONER TINA HOLBROOK.

17 AND IF WE GO DOWN UNDER "HISTORY OF
18 PRESENT ILLNESS," IF WE SORT OF MID-WAY THROUGH THIS
19 PARAGRAPH, DR. GORDON, I WILL JUST READ A COUPLE OF
20 SENTENCES FOR THE RECORD AND THEN I WILL ASK MY
21 QUESTION.

22 "HAS HISTORY OF ADHD. HE DOES COMPLAIN
23 OF CONTINUED SYMPTOMS ASSOCIATED WITH ADHD. HAS BEEN ON
24 CURRENT DOSE OF ADDERALL FOR SEVERAL YEARS. VERBALIZES
25 THAT HE DOES NOT TAKE MEDICATIONS ON THE WEEKENDS OR

1 WHEN HE DOES NOT HAVE TO COMPLETE MENTALLY CHALLENGING
2 TASKS. HAS TRIED SEVERAL INTERVENTIONS AT HOME, SUCH AS
3 USING HEADPHONES TO BLOCK OUT NOISE, SPECIALTY LIGHTING
4 AND SOOTHING SOUND MACHINES."

5 SO FROM THE PERSPECTIVE OF, YOU KNOW, OF
6 COURSE THE ENTIRE HISTORY THAT IS DISCUSSED HERE AND
7 THEN ALSO WHAT WE -- WHAT I JUST READ IN THE RECORD,
8 WHAT DOES THIS DOCUMENT TELL YOU RELATIVE TO THE ISSUES
9 WE ARE DISCUSSING TODAY?

10 A. WELL, THIS IS A REPORT OF SOMEBODY WHO IS
11 LOOKING TO FOCUS AND BE AS COMFORTABLE HE CAN HANDLING
12 CHALLENGING TASKS. OUR PATIENTS WOULD FIND IT DIFFICULT
13 ON WEEKENDS TOO, AND TAKE THEIR MEDICATION BECAUSE IT'S
14 NOT JUST ABOUT BEING CHALLENGED AND HAVING TO THINK
15 THROUGH THINGS.

16 IT'S ABOUT BEING ABLE TO PLAN AND
17 STRATEGIZE AND COPE FOR ALL OF THE DEMANDS THAT WE HAVE
18 IN OUR LIFE, WELL BEYOND THAT -- THOSE ARE MENTALLY
19 CHALLENGING. AS A MATTER OF FACT, IT'S THE ONES THAT
20 ARE THE LEAST MENTALLY CHALLENGING THAT CAN BE MOST
21 DIFFICULT FOR SOMEBODY WITH ADHD BECAUSE THEY MAY BE
22 LESS INTERESTING.

23 IT'S THE ROTE TASKS AND ROUTINE TASKS
24 THAT MOST CAUSE DIFFICULTIES FOR MOST INDIVIDUALS WITH
25 ADHD. SO THIS DOES NOT SOUND LIKE SOMEBODY WHO IS VERY

1 SIGNIFICANTLY IMPAIRED AND LIMITED IN THEIR ABILITY TO
2 FUNCTION. BUT DOES WHAT ANYBODY IN THIS SITUATION OR
3 ANYBODY ELSE'S SITUATION WOULD DO TO TRY TO FIND WAYS TO
4 BEST FOCUS AND BEST FEEL COMFORTABLE AND RELAXED.

5 Q. HOW ABOUT THE INTERVENTIONS, SUCH AS USING
6 HEADPHONES THAT BLOCK OUT NOISE AND LIGHTING AND
7 SOOTHING SOUND MACHINES?

8 A. THAT'S WHAT MANY MANY PEOPLE DO TO MAKE AN
9 ENVIRONMENT THAT IS MORE SOOTHING AND QUIET. THE FACT
10 THAT YOU USE -- ONE USES A SOUND MACHINE OR USES
11 HEADPHONES TO BLOCK OUT NOISE DOES NOT MEAN ANYTHING
12 OTHER THAN THAT IS WHAT THEY SEEM TO DO TO BE ABLE TO
13 FEEL THEY CAN FOCUS THE BEST.

14 Q. I WILL NOW PULL UP EXHIBIT DX 28. THIS IS A
15 PROGRESS NOTE FROM A JANUARY 10TH, 2023, VISIT WITH
16 NURSE PRACTITIONER TINA HOLBROOK.

17 AND IF WE LOOK UNDER "HISTORY OF PRESENT
18 ILLNESS," WHAT DOES THIS RECORD, DR. GORDON, TELL YOU
19 WITH RESPECT TO THE ISSUES WE ARE DISCUSSING TODAY AND
20 ADHD?

21 A. I MEAN, GENERALLY IT TELLS ME HE, AT THIS POINT,
22 FELT THAT AS FOR ADHD HIS SYMPTOMS WERE CONTROLLED. AND
23 THAT HE WAS FUNCTIONING OKAY, AT LEAST NOT HAVING
24 DIFFICULTIES BECAUSE OF INATTENTION PER SE.

25 THIS READS LIKE A NOTE OF SOMEBODY WHO IS

1 STABLE AND DOING PRETTY WELL FOR THEMSELVES.

2 Q. I WILL NOW PULL UP EXHIBIT DX 35. I LOST MY
3 PAGE NUMBERS, SO WE WILL JUST -- WE ARE GOING TO THE
4 PAGE THAT IS BATES NUMBERED NBME BAPT 0061. THIS IS A
5 PROGRESS NOTE FROM A FEBRUARY 6, 2023, VISIT WITH TINA
6 HOLBROOK. AND WE WILL FOCUS IN, AGAIN, UNDER THE
7 HISTORY OF PRESENT ILLNESS.

8 LOOKING AT THIS REPORT, DR. GORDON, WHAT
9 DOES THIS INFORMATION TELL YOU RELATIVE TO ADHD AND THE
10 ISSUES THAT WE ARE DISCUSSING TODAY FOR YOUR REVIEW?

11 A. ME EYE WENT, AND WOULD, GO TO STATEMENTS SUCH AS
12 "CONTINUES TO FEEL THAT ADHD SYMPTOMS ARE ADEQUATELY
13 CONTROLLED" HE SAYS, WITH CURRENT MEDICATION REGIMENT.

14 I ALSO CAN'T HELP BUT LOOK AT THIS AND
15 AND SEE THAT -- THAT HE REALLY DID NOT FEEL THAT HE
16 REQUIRED ACCOMMODATIONS. AND AGAIN, THAT -- THAT WOULD
17 BE VERY UNUSUAL FOR SOMEBODY WHO WAS REALLY IMPAIRED BY
18 THESE KINDS OF SYMPTOMS.

19 Q. IF WE GO TO -- STAY IN THIS FILE AND GO TO PAGE
20 NBME BAPT 0070.

21 IF YOU WERE TO RECEIVE THIS LETTER, DR.
22 GORDON, FOR REVIEW WHAT DOES IT TELL YOU ABOUT ANY
23 FUNCTIONAL LIMITATIONS RELATED TO ADHD?

24 A. IT SAYS NOTHING ABOUT THEM IN THIS LETTER.

25 Q. I AM NOW GOING TO PULL UP EXHIBIT PX 46. THIS

1 IS A PROGRESS NOTE FROM A MARCH 24TH, 2023, VISIT WITH
2 CHRISTINE BALLA.

3 IF WE AGAIN SCROLL DOWN TO THE HISTORY OF
4 PRESENT ILLNESS. AND LET'S JUST SCROLL DOWN SO WE CAN
5 SEE.

6 DR. GORDON, WHAT DOES THIS INFORMATION
7 TELL YOU ABOUT DR. KITCHENS' CLAIMED ADHD?

8 A. WELL, AGAIN, HE REPORTED THAT HIS ADHD SYMPTOMS
9 WERE ADEQUATELY MANAGED. HE IS ABLE TO FOCUS WELL. AND
10 DOES NOT EVEN NEED IT. HE IS NOW WORKING. AND SO
11 AGAIN, IT WOULD NOT TELL ME ANYTHING ABOUT IMPAIRMENT.
12 IT WOULD TELL ME THAT HE, FOR WHATEVER REASON, IS
13 FUNCTIONING OKAY IN HIS ABILITY TO RETAIN AND ASSERT
14 SELF-CONTROL.

15 Q. I WANT TO GO BACK -- I FOUND MY PAGE NUMBER. I
16 WANT TO GO BACK, IF WE CAN, TO DX 35. AND IF -- DX --
17 IF WE LOOK AT NBME BAPT 0048, AND IF WE SCROLL DOWN, I
18 WANT TO FOCUS FOR A MINUTE ON THE RECORD THAT BEGINS,
19 "AGAIN, I CONSULTED WITH DR. MARTIN ABOUT DETAILS THAT
20 COULD BE INCLUDED IN THE LETTER."

21 THERE'S A REFERENCE TO A PSYCHOLOGICAL
22 EVALUATION THERE. DO YOU SEE THAT, DR. GORDON? DO YOU
23 SEE WHERE WE ARE?

24 A. HE CAN CALL MY SIDE AND SCHEDULE FOR THE
25 PSYCHOLOGICAL EVALUATION?

1 Q. YES.

2 A. YES, I SEE IT.

3 Q. AND IT SAYS, "THIS WILL FURTHER ASSESS MORE
4 SPECIFIC NEEDS FOR ACCOMMODATION."

5 DO YOU SEE THAT?

6 A. I DO.

7 Q. WHY WOULD A PSYCHOLOGICAL EVALUATION BE NEEDED
8 TO FURTHER ASSESS MORE SPECIFIC NEEDS FOR
9 ACCOMMODATIONS?

10 A. PSYCHOLOGICAL TESTING CAN BE EXTREMELY IMPORTANT
11 AS PART OF AN ADHD EVALUATION. BOTH TO IDENTIFY WHETHER
12 THERE ARE DEFICITS ASSOCIATED WITH THE DISORDER, AND THE
13 EXTENT OF THOSE DEFICITS, BUT ALSO RULE OUT ALL THE
14 OTHER REASONS WHY SOMEBODY CAN BE INATTENTIVE AND
15 IMPULSIVE.

16 AS A MATTER OF FACT, MOST OF US FEEL THAT
17 PSYCHOLOGICAL TESTING IS AT ITS BEST IN THIS DIAGNOSTIC
18 REALM IN TRYING TO MAKE SURE THAT ISN'T OTHER FACTORS
19 THAT TESTS CAN ESTABLISH; ENDEMIC ABILITIES,
20 INTELLECTUAL ABILITIES, ET CETERA.

21 Q. LET'S TURN TO EXHIBIT PX 30. AND YOU CAN SCROLL
22 OUT FOR JUST A MINUTE SO WE CAN SEE.

23 SO IT DOES APPEAR THAT DR. KITCHENS
24 OBTAINED A PSYCHOLOGICAL EVALUATION; IS THAT WHAT IT
25 LOOKS LIKE TO YOU TOO?

1 A. YES, IT DOES.

2 Q. AND YOU HAVE REVIEWED THIS EVALUATION BEFORE,
3 CORRECT, DR. GORDON, IN CONNECTION WITH THE PRELIMINARY
4 INJUNCTION HEARING?

5 A. I DID.

6 Q. IS THIS THE ONLY PSYCHOLOGICAL EVALUATIONS OF
7 DR. KITCHENS THAT YOU ARE AWARE OF FROM THE MEDICAL
8 RECORDS?

9 A. IT IS.

10 Q. SO YOU HAVE REVIEWED THIS REPORT; CORRECT?

11 A. THAT'S CORRECT.

12 Q. AND I WILL ALSO NOTE FOR THE RECORD THAT YOU
13 ALSO REVIEWED DR. BACON'S DEPOSITION TRANSCRIPTS;
14 CORRECT?

15 A. I DID.

16 Q. IN THIS REPORT, DOCTOR -- MRS. BACON DIAGNOSED
17 DR. KITCHENS WITH ADHD; ISN'T THAT RIGHT?

18 A. YES.

19 Q. ONE OF DR. KITCHENS' EXPERT WITNESSES, DR.
20 SHEPHERD, OPINED THAT MRS. BACON'S EVALUATION REPORT WAS
21 COMPREHENSIVE.

22 DO YOU SHARE THAT OPINION?

23 A. NO, I DON'T.

24 Q. WHY NOT?

25 A. BECAUSE THE REPORT IS ESSENTIALLY BASED ON DR.

1 KITCHENS' SELF-REPORT OF THE SYMPTOMS AND HISTORY. AND
2 ON ONE -- OR BASED ON A COMPUTERIZED MEASURE OF
3 ASSESSMENT THAT HAS NEVER BEEN ESTABLISHED AS A DIVINING
4 ROD FOR THE DISORDER.

5 THIS REPRESENTS A CURSORY EVALUATION FOR
6 THE DISORDER. IT WOULD BE, IN ALL THE MANY, MANY, MANY
7 EVALUATIONS SOMEBODY LIKE I WOULD SEE IN A SUBMISSION
8 FOR AN ACCOMMODATION, WOULD BE ON THE VERY VERY LOW END
9 OF IT, BECAUSE IT'S MISSING SO MANY ESSENTIALS ASPECTS.

10 SO MUCH OF THE EVALUATION FOR ADHD, AS WE
11 TALKED ABOUT, GOES ON HISTORY AND AS I UNDERSTAND IT,
12 DOCTOR -- MRS. BACON NEVER REVIEWED HISTORY.

13 IT RELIES ON GETTING JOB PERFORMANCE
14 REVIEWS, PAST TEST PROTOCOLS, ALL OF THE INFORMATION
15 THAT YOU COULD GATHER TO UNDERSTAND IN THIS CASE HOW DR.
16 KITCHENS HAS FUNCTIONED OVER THE COURSE OF HIS LIFE.
17 BUT THAT DID NOT HAPPEN HERE.

18 DOCTOR -- MRS. BACON DID NOT, I FEEL,
19 DOCTOR SERVE DR. KITCHENS WELL BECAUSE WHAT SHE SHOULD
20 BE DOING IS BUILDING A CASE, SAYING LOOK, HERE IS THE
21 HISTORY YOU NEED, HERE IS THE PERVASIVENESS,
22 CONSISTENCY, HERE IS EVIDENCE OF IMPAIRMENT. THIS IS
23 WHY YOU SHOULD OFFER THE ACCOMMODATIONS.

24 AND THAT'S JUST NOT HERE. IT'S JUST
25 FORMATTED SELF-REPORT AND A COMPUTERIZED MEASURE OF

1 ATTENTION THAT ITSELF MAKES VERY CLEAR IT SHOULD NOT BE
2 USED AS A SOLE DIAGNOSTIC INDICATOR.

3 Q. IN YOUR OPINION, DOES THIS REPORT ADDRESS THE
4 EXISTENCE OR EXTENT OF DR. KITCHENS' FUNCTIONAL
5 LIMITATIONS?

6 A. IT DOES NOT.

7 Q. WELL, LET'S LOOK DOWN -- THERE'S A REFERENCE IN
8 HERE, AND I AM AFRAID I DON'T HAVE A PAGE REFERENCE, SO
9 MAYBE WE WILL JUST TALK ABOUT IT.

10 THERE IS A REFERENCE IN HERE TO DR.
11 KITCHENS', FOR EXAMPLE, MAINTAINING STRUCTURE THROUGH
12 WHITE BOARDS, NOTES, AND REMINDERS.

13 WHAT DOES THAT TELL YOU?

14 A. IT'S NON DIAGNOSTIC. MOST OF US WHO HAVE
15 DEMANDING LIVES, JUST ORDINARY LIVES, LEAVE OUR NOTES,
16 PUT OUR KEYS NEXT TO SOMETHING WE NEED TO TAKE WITH US,
17 THAT'S WHAT WE DO AS HUMANS. WE COMPENSATE FOR NOT
18 BEING PERFECT IN OUR FOCUS AND IN OUR ABILITY TO FOLLOW
19 ROUTINES. THOSE ARE JUST THINGS WE ALL DO.

20 AND THE MERE FACT THAT WE DO THEM DOES
21 NOT MEAN WE HAVE A MENTAL DISORDER. IT JUST MEANS, I
22 THINK, THAT WE ARE HUMAN. SOME OF US ARE MORE SCATTERED
23 THAN OTHERS PERHAPS, SOME OF US ARE MORE DISCIPLINED OF
24 OTHERS, BUT THAT'S NOT A REFLECTION OF PATHOLOGY.

25 Q. THERE IS ALSO A REFERENCE IN HERE TO DR.

1 KITCHENS FORGETTING TASKS OR LOSING TRACK OF TIME.

2 DOES THAT SHOW FUNCTIONAL LIMITATIONS?

3 A. THERE'S A WELL-KNOWN STUDY IN MASSACHUSETTS,
4 WHERE COLLEAGUES OF MINE ASKED PEOPLE COMING TO THE
5 DEPARTMENT OF MOTOR VEHICLES WHETHER THEY DID THINGS
6 LIKE LOOSE THINGS AND THEY GAVE THE CRITERIA OF SYMPTOMS
7 FOR THE DSM, AND AN EXTRAORDINARY NUMBER OF THOSE
8 PEOPLE, USUALLY AROUND 60 TO 65 PERCENT OF JUST PEOPLE
9 JUST WALKING IN TO THE DMV, REPORTED THOSE SAME
10 SYMPTOMS.

11 SO THE MERE FACT THAT YOU ARE FORGETFUL
12 AND INTERRUPT, THAT YOU SHOW SHOWS SYMPTOMS TO SOME
13 EXTENT, DOES NOT MEAN YOU HAVE A PSYCHIATRIC DISORDER.

14 Q. I BELIEVE YOU REFERENCED THIS, BUT DID MRS.
15 BACON ADMINISTER THE MOXO DISTRACTED CONTINUOUS
16 PERFORMANCE TEST?

17 A. SHE DID.

18 Q. WHAT WAS THIS TEST?

19 A. IT'S A TEST IS WITHIN THE GROUP OF TESTS CALLED
20 CONTINUOUS PERFORMANCE TESTS, THAT'S THE CPT PART. I
21 SHOULD BE CLEAR THAT I AM ONE OF THE DEVELOPER OF THE
22 CPT, ACTUALLY THE FIRST ONE THAT WAS COMMERCIALY
23 AVAILABLE BACK IN THE MID-80'S.

24 THEY ALL VARY A BIT IN WHAT -- HOW THEY
25 DELIVER THE TEST AND THE NUANCES AROUND IT, BUT

1 ESSENTIALLY THE PERSON IS TOLD TO IDENTIFY CERTAIN
2 COMBINATIONS OF NUMBERS, IN THIS CASE IMAGES, AND YOU
3 SHOULD ONLY PRESS THE BUTTON WHEN A CERTAIN COMBINATION
4 GOES BY.

5 AND IT'S A MEASURE OF SUSTAINED ATTENTION
6 AND A DEGREE OF IMPULSIVENESS AS WELL. SOME HAVE
7 DISTRACTORS, SOME DON'T. MINE HAD BOTH, BUT THAT'S --
8 THIS IS WITHIN THE TRADITION THAT HAPPENS TO BE
9 ADMINISTERED BY A COMPUTER.

10 Q. ARE MOXO TESTS DIAGNOSTIC OF ADHD -- OR, I'M
11 SORRY, CONTINUOUS PERFORMANCE TESTS, MORE GENERALLY?

12 A. YOU BETTER REPEAT THE QUESTION, I MIGHT HAVE
13 MISHEARD IT.

14 Q. LET'S DO THIS, LET'S PULL UP PX 27. THIS IS THE
15 MOXO REPORT AND YOU CAN SCROLL OUT ON THIS ONE.

16 SO LOOKING AT THESE SCORES, HOW DID DR.
17 KITCHENS DO ON THE MOXO?

18 A. NOT WELL.

19 Q. SO WHY DOESN'T THIS SHOW THAT HE WAS PROPERLY
20 DIAGNOSED WITH ADHD?

21 A. BECAUSE DOING POORLY ON A COMPUTER MEASURE IS
22 NOT REFLECTIVE OF HOW SOMEBODY PERFORMS IN THEIR REAL
23 LIFE FUNCTIONS UNLESS THERE IS EVIDENCE THAT IN REAL
24 LIFE AND ACTUAL FUNCTIONING THERE IS THIS LEVEL OF
25 IMPAIRMENT.

1 THE LINK BETWEEN OR THE LINE BETWEEN HOW
2 ONE DOES ON A COMPUTERIZED MEASURE AND HOW ONE DOES IN
3 LIFE IS A VERY VERY THIN ONE. THE WAY AND EVEN AS A
4 DEVELOPER OF THE CPT, WHERE THE CPT HELPS US IS WE HAVE
5 ALL KINDS OF OTHER EVIDENCE OF IMPAIRMENT ASSOCIATED
6 WITH ADHD SYMPTOMS AND THIS MAKES US FEEL BETTER THAT
7 NOT JUST OTHER RATINGS SCALES BUT ALSO BASED ON THE
8 PERSON'S BEHAVIOR. THERE IS EVIDENCE OF PROBLEMS OF
9 HANDING THESE KINDS OF SITUATIONS.

10 DR. KITCHENS: OBJECTION, YOUR HONOR.
11 CAN WE ZOOM IN ON THE DOCUMENTS SO WE CAN HAVE AN
12 ACCURATE REPRESENTATION. I CANNOT READ ANYTHING THAT'S
13 ON THE SCREEN AT ALL, ANY NUMBERS I'M NOT SURE HOW DR.
14 GORDON WAS ABLE TO READ THAT. THANK YOU.

15 BY MS. MEW:

16 Q. DR. GORDON, YOU HAVE READ-- YOU HAVE REVIEWED
17 THIS REPORT BEFORE; CORRECT?

18 A. I HAVE.

19 MS. MEW: I UNDERSTAND, DR. KITCHENS,
20 SORRY ABOUT THAT. LET ME -- DON'T BE AFRAID TO SPEAK
21 UP. I'M SORRY. IF YOU CAN SCROLL DOWN MAYBE SO WE CAN
22 SEE -- THERE WE GO. OKAY.

23 CAN YOU SEE THE NUMBERS NOW, DR.
24 KITCHENS?

25 DR. KITCHENS: YES, MA'AM, THANK YOU.

1 MS. MEW: NO PROBLEM, JUST LET ME KNOW.

2 BY MS. MEW:

3 Q. I WANT TO FOCUS ON THAT FIRST MEASURE ON THE
4 LEFT THERE. AND IF WE -- I NEED TO SCROLL BACK UP JUST
5 TO SEE WHAT THE A IS FOR, I THINK IT'S FOR
6 ATTENTIVENESS. YES. OKAY.

7 IT'S NEGATIVE 15.2, THAT SEEMS LIKE A --
8 WELL, YOU TELL ME, DR. GORDON:

9 WHAT DOES THAT SCORE TELL YOU?

10 A. THAT'S REMARKABLY OUT OF THE NORMAL RANGE.

11 Q. AND SO WHAT DO YOU DO WITH THAT INFORMATION AS
12 PART OF YOUR REVIEW?

13 A. WELL, THAT'S SO -- SOMEBODY WOULD HAVE TO BE
14 LIKELY SUBSTANTIALLY BRAIN DAMAGED TO HAVE SCORES THAT
15 FAR OUTSIDE THE NORM, SO TO BE HONEST, I WOULD LIKE AT
16 THAT AND GO -- UNLESS SOMEBODY REALLY HAD A GROSS DEGREE
17 OF IMPAIRMENT IN THEIR LIFE, THAT -- THAT IS A CURIOUS
18 SCORE.

19 Q. AND IF WE SCROLL DOWN -- CAN YOU SCROLL DOWN TO
20 THE BOTTOM OF THE PAGE AND ACTUALLY -- KEEP SCROLLING.

21 WHAT WE NEED TO DO IS LOOK AT THE VERY
22 BOTTOM DO YOU SEE THE -- UNFORTUNATELY, I THINK SOME OF
23 THE KEY LANGUAGE IS GOING TO BE COVERED WITH THE LABEL.

24 IF YOU CAN EXPAND AS MUCH AS YOU CAN.

25 DR. GORDON, I REALIZE THAT SOME OF THE

1 LANGUAGE AT THE BOTTOM HERE IS COVERED UP, BUT TO THE
2 BEST OF YOUR UNDERSTANDING, IS THIS INFORMATION FROM THE
3 TEST DEVELOPERS CONSISTENT WITH WHAT YOU HAVE SAID ABOUT
4 USING THE MOXO CPT AS A DIAGNOSTIC MEASURE?

5 A. YES. THAT LANGUAGE SHOULD ONLY BE USED AS A
6 DECISION SUPPORT TOOL AND SHOULD NOT BE THE SOLE BASIS
7 FOR DIAGNOSES. THIS IS EXACTLY WHAT I AM SAYING. THIS
8 IS THE ONLY THINGS YOU CAN SAY ABOUT THESE MEASURES.
9 THEY ARE USEFUL BUT NO MEANS ARE MEASURES THAT YOU
10 SHOULD HANK YOUR DIAGNOSTIC HAT ON.

11 Q. LET'S GO BACK TO PX 30. IF WE CAN TURN TO PAGE
12 3, WE ARE BACK ON MRS. BACON'S REPORT. IF WE CAN SCROLL
13 DOWN TO THE BOTTOM HALF OF THE PAGE. THIS IS WHERE --

14 MS. MEW: CAN YOU SEE THIS OKAY, DR.
15 KITCHENS?

16 BY MS. MEW:

17 Q. THIS IS WHERE MRS. BACON IS BEGINNING HER
18 DISCUSSION OF THE DIAGNOSTIC INTERVIEW FOR ADHD IN
19 ADULTS 2, OR THE A-DIVA 2.

20 WHY DOESN'T THE INFORMATION THAT SHE IS
21 PROVIDING FROM THE A-DIVA SUBSTANTIATE AN ADHA DIAGNOSIS
22 AND SHOW FUNCTIONAL IMPAIRMENT?

23 A. BECAUSE THE INFORMATION IS COMPLETELY AND
24 TOTALLY PROVIDED BY DR. KITCHENS, IN THE MIDDLE OF A
25 LEGAL ACTION. SO THIS WOULD NOT BE PARTICULARLY

1 CONVINCING ON ITS OWN AS EVIDENCE OF EITHER THE SYMPTOMS
2 OR THE IMPAIRMENT ASSOCIATED WITH THE SYMPTOMS.

3 Q. JUST SO THAT I AM CLEAR, IS THIS THE SELF-REPORT
4 THAT I HAVE HEARD YOU REFER TO?

5 A. YES.

6 Q. BUT IT'S IN A FORM. JUST EXPLAIN THAT FOR US?

7 A. WELL, THE WAY I WOULD PUT THAT, THE SOURCE OF
8 THE INFORMATION IS, IN THIS CASE, DR. KITCHENS. THAT'S
9 SELF-REPORT. THE FACT THAT YOU CAN MAKE GRAPHS OUT OF
10 THE RESPONSES, THAT YOU CAN LINK THEM TOGETHER IN
11 CERTAIN CLUSTERS OF SYMPTOMS OR DOMAINS OF IMPAIRMENT,
12 NONETHELESS, IT'S ALL STEMMING FROM THE CLIENT.

13 Q. AND THEN IF WE GO TO PAGE 4, OF PX 30, AND HERE
14 IT BEGINS DISCUSSION OF THE ACHENBACH SYSTEM OF
15 EMPIRICALLY BASED ASSESSMENTS. AND I KNOW YOU HAVE
16 REVIEWED THIS BEFORE, DR. GORDON, SO I WILL JUST GIVE
17 REFERENCE IN THE RECORD.

18 SO THERE IS DISCUSSIONS OF DR. KITCHENS'
19 AND HIS WIFE'S RESPONSE TO THESE ASSESSMENTS.

20 WHY DOESN'T THIS INFORMATION, WHICH
21 OTHERWISE PAGES 4 TO 6 OF THE REPORT, WHY DOESN'T THIS
22 SHOW SIGNIFICANT LEVELS OF -- AND ACTUALLY, LET'S SCROLL
23 DOWN. LET'S GO TO THE NEXT PAGE.

24 LET'S JUST LOOK FOR A MINUTE AT SORT OF
25 THE SUMMARY OF THE SCORES FROM DR. KITCHENS.

1 AND THEN IF WE GO DOWN AND SEE THE
2 SUMMARY OF THE REPORT FROM MRS. KITCHENS, HIS WIFE. SO
3 MRS. KITCHENS, BOTH DR. KITCHENS AND HIS WIFE REPORT
4 SIGNIFICANT LEVELS OF PROBLEMS FROM ADHD, ACCORDING TO
5 THESE SCALES; CORRECT?

6 A. THAT'S CORRECT.

7 Q. OKAY. SO WHY DON'T THESE REPORTS SUPPORT THE
8 DIAGNOSIS?

9 A. AGAIN, THEY'RE SELF-REPORT. THERE IS -- YOU
10 DON'T MAKE THE DIAGNOSIS OF ADHD BY ESSENTIALLY ASKING
11 THE PATIENT DO THEY HAVE ADHD. OR THE PATIENT'S WIFE,
12 IN THIS CASE. THAT'S JUST NOT HOW IT GOES.

13 NEUROPSYCHOLOGY, NEUROPSYCHIATRY, IF WE
14 HAVE LEARNED ANYTHING PARTICULARLY IN FORENSIC SETTINGS
15 IS THAT YOU NEED CONFIRMATION OR VALIDATION THAT THE DSM
16 WAS NOT ESTABLISHED SO THAT WE SIMPLY ASK THE PATIENTS
17 WELL, DO YOU THINK YOU HAVE ADHD, AND TELL US WHAT IT'S
18 LIKE FOR YOU.

19 Q. YOU CAN TAKE THIS DOWN.

20 DR. GORDON, WHAT ARE SYMPTOM VALIDITY
21 TESTS?

22 A. SYMPTOM VALIDITY TESTS ARE WAYS OF MAKING SURE
23 OR TRYING TO MAKE SURE THAT PATIENTS ARE NOT
24 EXAGGERATING THEIR SYMPTOMS. THEY WERE DEVELOPED IN --
25 FOR NEUROPSYCHOLOGY, NEUROPSYCHIATRY, FOR FORENSIC

1 SETTINGS BECAUSE IT BECAME VERY VERY CLEAR, MANY YEARS
2 AGO, THAT PATIENTS IN SITUATIONS, CONSCIOUSLY OR
3 OTHERWISE, IF THERE WAS SOME POTENTIAL GAIN WOULD
4 PROVIDE REPORTS OF THEIR SYMPTOMS THAT MAY NOT BE WHOLLY
5 ACCURATE.

6 SO THAT'S WHERE THEY CAME FROM. THEY ARE
7 A STANDARD PART OF NEUROLOGICAL AND NEUROPSYCHOLOGICAL
8 TESTS. I DON'T THINK NOWADAYS ONE WOULD BOTHER
9 SUBMITTING A NEUROPSYCHOLOGY REPORT REGARDING BRAIN
10 DAMAGE OR ANY OTHER ISSUE UNLESS THERE WAS SOME FORM OF
11 A SYMPTOM VALIDITY TEST AS PART OF IT.

12 Q. DO YOU ADMINISTER SYMPTOM VALIDITY TESTS WHEN
13 YOU ASSESS INDIVIDUALS FOR ADHD?

14 A. YES.

15 Q. DID MRS. BACON ADMINISTER ANY SYMPTOM VALIDITY
16 TESTS TO DR. KITCHENS?

17 A. NO.

18 Q. IS THE RECORD REVIEW AN IMPORTANT PART OF AN
19 ADHD ANALYSIS?

20 A. MOST OF US WILL TELL YOU IT'S THE ESSENTIAL PART
21 OF AN ADHA DIAGNOSIS. IT'S WHAT MAKE DIAGNOSING ADHD A
22 WHOLE LOT EASIER THAN OTHER DISORDERS, LIKE LEARNING
23 DISABILITY, IT'S WHERE YOU GET IN DISCUSSIONS OF WHICH
24 TESTS AND DIFFERENCES IN TESTS.

25 WITH US, IT RIDES ON CLINICAL HISTORY.

1 IF SOMEBODY HAS ADHD FROM EARLY IN THEIR LIFE, ITS
2 EVIDENT, AND THEY CAN REGALE YOU WITH ALL KINDS OF
3 EVIDENCE OF THE EXTENT TO WHICH THOSE SYMPTOMS HAD
4 CAUSED SOME PROBLEMS IN THEIR LIVES.

5 Q. HAVE YOU SEEN RECORDS, MEDICAL OR EDUCATIONAL
6 RECORDS, THAT DR. KITCHENS HAS PRODUCED IN THIS
7 LITIGATION?

8 A. I HAVE SEEN RECORDS, YES.

9 Q. ARE THESE EXAMPLES OF OBJECTIVE RECORDS THAT
10 COULD BE PROVIDED AS PART OF A RECORD REVIEW?

11 A. SURE.

12 Q. DID YOU SEE ANY DISCUSSION OF THESE TYPES OF
13 RECORDS IN MRS. BACON'S REPORT?

14 A. NO.

15 Q. WHAT IS A DIFFERENTIAL DIAGNOSIS?

16 A. CAN I JUST GO BACK A SECOND, DO YOU MIND? I
17 JUST REALIZED I DIDN'T GIVE YOU A FULL ENOUGH ANSWER TO
18 THAT.

19 THE MOST SUPERVISING ASPECT OF SOME OF
20 THESE REPORTS, LIKE MRS. BACON'S, IS NOT LOOKING AT
21 PRIOR TEST PERFORMANCE WITH AND WITHOUT ACCOMMODATIONS.

22 THAT'S THE FIRST THING WE WOULD LOOK AT.

23 IF SOMEBODY FEELS THAT THEY NEED ACCOMMODATIONS, THEY
24 WOULD HAVE GOTTEN THOSE ACCOMMODATIONS, LIKELY, ALL
25 ALONG THE WAY AND THAT'S WHY ANY OF THE TESTING

1 ORGANIZATIONS' DOCUMENTATION REQUIREMENTS ASK YOU TO
2 SUBMIT THOSE SCORES SO YOU CAN SEE HOW THEY DO WITH AND
3 WITHOUT ACCOMMODATIONS.

4 CLEARLY, IF SOMEBODY DOES IN THE
5 90TH PERCENTILE -- WHATEVER, 80TH PERCENTILE, WITHOUT
6 ACCOMMODATIONS THEN IT'S HARD TO MAKE THE ARGUMENT THAT
7 THEY ARE --

8 MS. MEW: YOU FROZE, DOCTOR.

9 THE WITNESS: I'S SORRY -- IS IT
10 GENERALLY FREEZING, OR JUST EVERY ONCE IN A WHILE?

11 MS. MEW: JUST RIGHT THEN IT DID.

12 THE WITNESS: OKAY. I'M SORRY.

13 I JUST WAS MAKING THE POINT THAT TO MAKE
14 THAT TO MAKE THE CASE THAT SOMEBODY IS LIMITED IN THEIR
15 ABILITY TO TAKE A TEST, YOU WOULD WANT TO KNOW HOW THEY
16 DID ON TESTS IN THE PAST.

17 AND YOU WOULD, IF YOU WERE TRYING TO
18 BUILD A CASE FOR ACCOMMODATIONS, YOU COULD SAY LOOK,
19 HERE IS HOW I DID WITH ACCOMMODATIONS, HERE IS HOW I DID
20 WITHOUT ACCOMMODATIONS, JUDGE FOR YOURSELF.

21 Q. WHAT IS A DIFFERENTIAL DIAGNOSIS?

22 A. DIFFERENTIAL DIAGNOSIS IS RULING OUT ALL OF THE
23 OTHER REASONS SOMEBODY COULD HAVE THE SYMPTOMS YOU ARE
24 LOOKING AT. SO IN THIS CASE IT'S INCREDIBLY IMPORTANT
25 TO MAKE SURE THAT SOMEBODY WHO IS REPORTING THESE

1 SYMPTOMS DOES NOT ACTUALLY HAVE SOME OTHER DISORDER OR
2 SOME OTHER PHENOMENON OR CIRCUMSTANCES GOING ON.

3 AGAIN, IF YOU LOOK THROUGH THE DSM YOU
4 WILL FIND SOME VERSION OF POOR CONCENTRATION AND POOR
5 FOCUS IN ABOUT EVERY DISORDER. AND SO YOU NEED TO MAKE
6 SURE, PARTICULARLY WHEN IT COMES TO MEDICATIONS,
7 DECIDING ABOUT MEDICATIONS.

8 IF SOMEBODY IS HAVING TROUBLE
9 CONCENTRATING BUT IT IS BECAUSE THEY ARE ANXIOUS AND NOT
10 BECAUSE THEY ARE ADHD, YOU DON'T WANT TO GIVE THEM
11 STIMULANTS. YOU WOULD WANT TO GIVE THEM -- IF YOU WERE
12 TO GIVE MEDICATION AN ANTIANXIETY SORT OF MEDICATION.

13 IF SOMEBODY, IF A YOUNGSTER FOR EXAMPLE,
14 IS HAVING TROUBLE PAPERING ATTENTION BECAUSE THEY DON'T
15 HAVE PROCESS TO WORDS RIGHT, THEY HAVE A LEARNING
16 PROBLEM OR SOME NORMAL ABILITIES GENERALLY, YOU CAN GIVE
17 THEM TWO PACK -- (UNINTELLIGIBLE) -- SOME OTHER
18 DISORDER.

19 THE REPORTER: YOU FROZE AGAIN.

20 THE WITNESS: SORRY. I WAS WAXING POETIC
21 THERE TOO. WHAT PART DO I NEED TO REPEAT.

22 MS. MEW: I THINK THE PART -- YOU WERE
23 TALKING ABOUT -- YOU GOT TO THE POINT WHERE YOU WERE
24 TALKING ABOUT THE TESTING THAT YOU COULD DO IF SOMEONE
25 WAS HAVING, FOR EXAMPLE, IF YOU NEEDED TO TEST FOR

1 READING OR COGNITIVE OR ISSUES LIKE THAT.

2 A. RIGHT. AND SO I WAS JUST MAKING THE POINT THAT
3 YOU NEED TO MAKE SURE THAT THE PROBLEMS ARE ASSOCIATED
4 WITH ADHD, AND NOT ALL THE OTHER DISORDERS OR LIFE
5 CIRCUMSTANCES THAT CAN LEAD SOMEBODY TO BE INATTENTIVE.

6 Q. DID MRS. BACON CONDUCT A DIFFERENTIAL DIAGNOSIS?

7 A. NO.

8 Q. IS THE INFORMATION IN MRS. BACON'S REPORT SHOW
9 THAT DR. KITCHENS IS SUBSTANTIALLY LIMITED IN ANY MAJOR
10 LIFE ACTIVITY, COMPARED TO MOST PEOPLE, RELEVANT TO
11 TAKING THE USMLE?

12 A. IT DID NOT.

13 Q. AND WHY NOT?

14 A. IT DOES NOT EVEN ADDRESS HIS FUNCTIONAL
15 LIMITATIONS, EITHER CURRENTLY OR HISTORICALLY. IT JUST
16 SIMPLY REPORTS HIS CONCERNS ABOUT HIS ABILITY TO ATTEND,
17 AND DOES NOT REALLY SEEK TO, AGAIN, BUILD A CASE THAT
18 THIS IS HAS BEEN A PROBLEM HE HAS HAD OVER TIME THAT HAS
19 IMPACTED HIM SUBSTANTIALLY IN MULTIPLE SITUATIONS.

20 SHE ESSENTIALLY SEEMED TO SAY WELL, HE
21 SAYS HE HAS ADHD, AND SO WE WILL ACCEPT THAT.

22 Q. DOES THE INFORMATION IN MRS. BACON'S REPORT SHOW
23 THAT DR. KITCHENS NEEDS ACCOMMODATIONS SUCH AS EXTRA
24 TIME TO ACCESS THE USMLE?

25 A. IT DOES NOT, AND SHE WOULD HAVE HAD TROUBLE

1 BUILDING THAT CASE BECAUSE SHE DIDN'T LOOK AT THE
2 DOCUMENTATION REQUIREMENTS FOR -- OR, AT LEAST, I DON'T
3 BELIEVE SHE DID -- FOR THE NBME'S PROCESS.

4 SO YOU HAVE TO KNOW ABOUT THE TEST TO BE
5 ABLE TO BE AWARE OF -- (UNINTELLIGIBLE).

6 MS. MEW: DR. GORDON, I APOLOGIZE, YOUR
7 HONOR, THIS HAS NOT HAPPENED.

8 YOU WERE -- YOU FROZE AGAIN, DR. GORDON.

9 DO YOU HAVE ALL -- IS THIS THE ONLY THING
10 RUNNING ON YOUR COMPUTER RIGHT NOW?

11 THE WITNESS: YEAH, IT IS AND I HAVE
12 NEVER REALLY HAD A PROBLEM LIKE THIS I'M SORRY.

13 MS. MEW: THAT'S FINE.

14 BY MS. MEW:

15 Q. YOU WERE SAYING THAT SHE WOULD NEED TO KNOW
16 ABOUT THE TEST. IS THERE ANYTHING ELSE YOU WANT TO SAY
17 ON THAT POINT?

18 A. NO, IT'S JUST HOW DO YOU SAY WHETHER SOMEBODY
19 NEEDS MORE OR LESS TIME IF YOU DON'T KNOW HOW LONG THE
20 TEST GOES FOR, THE NUMBER OF BREAKS INVOLVED, ET CETERA.

21 Q. HAVE YOU SEEN ANY DOCUMENTATION ASSESSING DR.
22 KITCHENS FOR A READING DISORDER?

23 A. NO.

24 Q. HOW WOULD YOU ASSESS FOR A READING DISORDER?

25 A. YOU ADMINISTER TESTS OF READING.

1 Q. CAN YOU EXPLAIN WHAT THOSE TESTS ARE?

2 A. WELL, THERE ARE A VARIETY OF THEM BUT THEY LOOK
3 AT VARIOUS ASPECTS OF READING, HOW QUICKLY THEY READ,
4 HOW WELL THEY UNDERSTAND WHAT THEY READ, ET CETERA.

5 Q. YOU HAVE TALKED ABOUT A RECORD REVIEW AND I
6 BELIEVE YOU'VE TESTIFIED THAT ONE CATEGORY OF
7 INFORMATION THAT MIGHT BE HELPFUL IN ASSESSING SOMEONE
8 FOR ADHD IS PRIOR SCHOOL RECORDS; IS THAT CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND WHEN YOU REVIEWED THE INFORMATION THAT DR.
11 KITCHENS SUBMITTED TO NBME, WITH HIS 2022 REQUEST, JUST
12 TO BE CLEAR, THERE WERE NOT SCHOOL RECORDS IN THOSE
13 REQUESTS; CORRECT?

14 A. THAT'S CORRECT.

15 Q. BUT WE DO NOW HAVE SOME SCHOOL RECORDS THAT HAVE
16 BEEN PRODUCED IN THE LITIGATION AND I WILL PULL UP JX 1.

17 SO THESE ARE HISTORICALLY -- LET ME ASK
18 YOU A QUESTION BEFORE WE GET STARTED IN THESE BASE LINE
19 QUESTIONS.

20 DR. GORDON, CAN SOMEONE BE FIRST
21 DIAGNOSED WITH ADHD AS AN ADULT?

22 A. NO, UNLESS THEY HAVE A LONG LONG HISTORY, JUST
23 TO BE CLEAR. IF SOMEBODY HAS A LONG LONG --

24 (UNINTELLIGIBLE) -- THAT'S ONE THING. BUT IF SOMEBODY

25 --

1 Q. DR. GORDON, PLEASE STOP, BECAUSE YOU FROZE
2 AGAIN.

3 A. IF SOMEBODY HAS A LONG HISTORY OF ADHD TYPE
4 IMPAIRMENT, AND FINALLY THAT IS RECOGNIZED LATER IN
5 LIFE, YES, THEY CAN BE BUT IF SOMEBODY IS -- FUNCTIONS
6 WELL THROUGH THE COURSE OF THEIR LIFE THEY CAN'T BECOME
7 ADHD WHEN THEY ARE 20, 30, 40.

8 WE ONCE HAD A REFERRAL FOR AN 83-YEAR OLD
9 MAN. IT JUST DOESN'T WORK THAT WAY YOU DON'T COME DOWN
10 WITH ADHD SUDDENLY.

11 Q. RIGHT. BUT SO I GUESS ASKING IN A DIFFERENT
12 WAY:

13 EVEN IF YOU ARE DIAGNOSED WITH ADHD AS AN
14 ADULT, DOES THE DSM REQUIRE YOU TO SHOW CHILDHOOD ONSET?

15 A. YES.

16 Q. SO LOOKING AT THIS ELEMENTARY SCHOOL REPORT CARD
17 HOW DOES THIS INFORM THE ADHD ANALYSIS?

18 A. THERE IS NOTHING ON HERE THAT INDICATES THAT HE
19 IS DOING UNUSUALLY POORLY. THAT HE IS -- LOOKS LIKE A
20 REASONABLY WELL-ADJUSTED STUDENT. IF YOU GO TO THE
21 CONDUCT SCORES WHERE WE OBVIOUSLY GO TO PRETTY QUICKLY,
22 YOU CAN SEE THAT THEN FIRST AND SECOND GRADE THEY WERE
23 ALL SATISFACTORY.

24 LOOKS LIKE THIRD GRADE STARTED OKAY AND
25 DIDN'T DO SO WELL. AND THEN BY FIFTH GRADE HE'S BACK ON

1 TRACK. THIS IS NOT UNUSUAL. IT LOOKED LIKE HIS
2 BEHAVIOR DETERIORATED A LITTLE BIT IN THIRD AND FOURTH
3 GRADE, BUT IT'S NOT THE CONSISTENT PATTERN WE WOULD SEE
4 AND IN BOLD TERMS WITH SOMEBODY WHO HAS ADHD.

5 Q. IT LOOKS LIKE DR. KITCHENS RECEIVED INDIVIDUAL
6 INSTRUCTION IN READING IN FIRST GRADE.

7 WHAT DOES THAT TELL US RELEVANT TO THE
8 ADHD ANALYSIS?

9 A. IT'S VERY VERY COMMON FOR CHILDREN. ITS USUALLY
10 ABOUT A THIRD OF A CLASS WILL GET SOME REMEDIAL READING
11 HELP JUST AS THEY ARE LEARNING TO READ AND SOME NEED A
12 LITTLE MORE SUPPORT THAN OTHERS.

13 Q. I WILL NOW PULL UP EXHIBIT JX 2. AND FOR THE
14 RECORD, WE HAVE ESTABLISHED THIS IS A MIDDLE SCHOOL
15 TRANSCRIPT FOR DR. KITCHENS.

16 WHAT DOES THIS INFORMATION TELL YOU
17 RELATIVE TO AN ADHD ANALYSIS?

18 A. HE IS A "B", "C" STUDENT GENERALLY, AND THERE IS
19 NOTHING ON HERE. HE WAS PROMOTED FROM GRADE-TO-GRADE.
20 AND THERE IS NOTHING HERE THAT WOULD SEEM TO INDICATE
21 THAT HE WAS ESPECIALLY MALADJUSTED OR LEARNING POORLY.

22 Q. I WANT TO PULL UP JX 3. AND WE HAVE ESTABLISHED
23 THIS IS A HIGH SCHOOL TRANSCRIPT FOR DR. KITCHENS. AND
24 YOU HAVE REVIEWED THIS.

25 MS. MEW: DR. KITCHENS, CAN YOU SEE THIS

1 OKAY?

2 BY MS. MEW:

3 Q. WHAT DOES THIS HIGH SCHOOL TRANSCRIPT SHOW US
4 RELEVANT TO AN ADHD ANALYSIS?

5 A. HE WAS A SOLID STUDENT. HE GRADUATED 45TH OUT
6 OF 135. IT LOOKS LIKE HE WAS PROMOTED YEAR-TO-YEAR.
7 THERE IS NOTHING ON HERE THAT CATCHES THE EYE.

8 Q. I AM NOW GOING TO PULL UP EXHIBIT JX 4.

9 I THINK EVERYTHING IS A LITTLE LAG-EY
10 THIS AFTERNOON. OKAY.

11 AND WE HAVE ESTABLISHED THAT THIS IS DR.
12 KITCHENS' COLLEGE TRANSCRIPT FOR BEREA COLLEGE.

13 AND YOU HAVE REVIEWED THIS BEFORE, DR.
14 GORDON, AS WELL?

15 A. YES.

16 Q. WHAT DOES THE COLLEGE TRANSCRIPT SHOW US
17 RELATIVE TO AN ADHD ANALYSIS?

18 A. AGAIN, THERE IS NOTHING HERE THAT SEEMS TERRIBLY
19 OUT OF THE ORDINARY. IT LOOKS LIKE A COLLEGE TRANSCRIPT
20 OF A SOLID, YOU KNOW, "B", "C" STUDENT.

21 Q. AND NOW PULL UP --

22 A. (UNINTELLIGIBLE) -- SOMETIMES NOT.

23 Q. I WILL NOW PULL UP JX 5. WE HAVE ESTABLISHED
24 THAT THIS IS DR. KITCHENS' MEDICAL SCHOOL TRANSCRIPT AND
25 HAVE YOU REVIEWED THIS DOCUMENT, DR. GORDON?

1 A. I DID.

2 Q. WHAT DOES THIS MEDICAL SCHOOL TRANSCRIPT SHOW US
3 RELATIVE TO AN ADHD ANALYSIS?

4 A. WELL, FIRST HE WAS IN MEDICAL SCHOOL AND THAT
5 WOULD MAKE IT -- HIM, A RARE ADHD PERSON IF HE WERE TO
6 BE, BECAUSE NOT TOO MANY OF US MAKE IT TO MEDICAL SCHOOL
7 AND THE FACT THAT HE MADE IT IN AND THROUGH WOULD
8 SUGGEST THAT HE DOES QUITE WELL FOR HIMSELF, AND PASSED
9 MEDICAL SCHOOL.

10 SO THIS IS AN INDICATION OF GOOD
11 FUNCTIONING, NOT POOR FUNCTIONING.

12 Q. WE CAN TAKE THAT DOWN. I AM GOING TO JUST
13 DISCUSS A FEW THINGS GENERALLY, DR. GORDON, JUST IN THE
14 INTEREST OF TIME AND MOVING FORWARD.

15 DID YOU REVIEW DR. KITCHENS' DECLARATION
16 THAT WAS SUBMITTED AS PART OF THE PRELIMINARY INJUNCTION
17 MOTION?

18 A. YES.

19 Q. AND DID YOU REVIEW THE DECLARATION FROM DR.
20 KITCHENS' MOTHER, MISSIE KING, THAT WAS FILED AS PART OF
21 THE PART OF THE PRELIMINARY INJUNCTION MOTION?

22 A. I DID.

23 Q. AND DID YOU REVIEW THE TRANSCRIPT OF DR.
24 KITCHENS' AND MS. KING'S TESTIMONY AT THE PRELIMINARY
25 INJUNCTION HEARING?

1 A. I DID.

2 Q. IS THE INFORMATION CONVEYED IN THIS MATERIAL IS
3 THIS INFORMATION THAT IS INFORMATIVE WHEN YOU ARE
4 CONDUCTING AN ADHD ANALYSIS?

5 A. YES.

6 Q. HOW DOES -- HOW DID THIS INFORMATION, THE
7 TESTIMONY THAT YOU REVIEWED, INFORM YOUR ANALYSIS
8 RELATIVE TO ADHD?

9 A. I WAS MOST TAKEN WITH MS. KING'S DECLARATION
10 BECAUSE IT -- IT PRESENTED HIS HISTORY OF SOMEBODY WHO,
11 IN SOME OF THE EARLY GRADES, THE TEACHERS DID COME TO
12 HER WITH SOME CONCERNS ABOUT HIS BEHAVIOR. AND SHE FELT
13 THOUGH THAT HE WAS PERFORMING WELL, AND SAID THAT SHE
14 WOULD ESSENTIALLY WORK WITH HIM IN A SUB CLINICAL WAY.

15 IN OTHER WORDS, NOT THAT HE HAD A
16 DISORDER BUT SOMETHING THAT HE COULD WORK ON AND SHE
17 COULD WORK ON AND THE TEACHERS COULD SEPARATELY. SO
18 INFORMALLY SHE FELT IT SHOULD BE APPROACHED, NOT WITH
19 MEDICATIONS AND EVALUATIONS, ET CETERA. AND WHAT WAS
20 MOST INTERESTING --

21 DR. KITCHENS: OBJECTION, YOUR HONOR.
22 MISS CONSTRUCTION OF ACTUAL DECLARATION OR TESTIMONY?

23 THE COURT: I AM GOING TO OVERRULE IT
24 BECAUSE IT'S IN THE RECORD AND I WILL HAVE A CHANCE THE
25 REEVALUATE THE DECLARATION IN COMPARISONS TO DR.

1 GORDON'S TESTIMONY.

2 YOU CAN FINISH YOUR ANSWER, DR. GORDON.

3 THE WITNESS: I WAS JUST -- WHAT SHE
4 INDICATED IN THAT DECLARATION AND ALSO, I BELIEVE, IN
5 THE DEPOSITION, IS THAT DR. KITCHENS WAS ABLE TO PERFORM
6 WELL. INSTITUTING STRATEGIES AT THAT AT FIRST SHE AND
7 THE TEACHERS SUGGESTED, AND THEN HE SUGGESTED -- OR HE
8 IMPLEMENTED AND THOUGHT ABOUT AND WORKED ON ON HIS OWN.

9 THAT WAS VERY STRIKING TO ME. THE WHOLE
10 IDEA THAT ADHD IS THAT YOU DON'T DO THOSE WHAT ARE
11 CALLED "EXECUTIVE FUNCTIONS." YOU DON'T STOP AND
12 STRATEGIZE AND COME UP WITH STRATEGIES AND IMPLEMENT
13 THOSE STRATEGIES. IF WE COULD GOT OUR ADHD PATIENTS TO
14 STEP -- (UNINTELLIGIBLE) -- HE WAS RIGHT, THAT HE COULD
15 PERFORM WELL IF HE IMPLEMENTED THE STRATEGIES, THAT HE
16 EVENTUALLY DID SO AND FIGURED IT OUT.

17 SOUNDS LIKE IN NO SMALL WAY ON HIS OWN,
18 THAT SPEAKS TO SOMEBODY WHO CAN STOP, THINK, CONSIDER
19 THINGS, AND DISCIPLINE HIMSELF WITHOUT EVEN ANY INTERNAL
20 NEEDS. SO THAT SHOWS REFLECTION AND IMPULSE CONTROL.
21 IT DOESN'T SHOW AN INABILITY TO STRATEGIZE AND IMPLEMENT
22 STRATEGIES.

23 Q. I AM GOING TO TRY TO DO THIS QUICKLY. IF WE
24 COULD PULL UP DX 4. IF WE COULD SCROLL DOWN TO THE
25 BOTTOM OF THE FIRST PAGE.

1 DR. GORDON, IF YOU LOOK AT PARAGRAPH 6,
2 IS THAT THE TESTIMONY THAT YOU WERE REFERENCING IN TERMS
3 OF HIGH PERFORMANCE IN CLASS WORK?

4 A. CORRECT.

5 Q. AND THEN IF YOU WOULD ALSO TURN TO PAGE 4, OF
6 THIS DOCUMENT, I MEAN, 3, I'M SORRY. PARAGRAPH 16.

7 DOES THIS ALSO REFLECT TESTIMONY THAT DR.
8 KITCHENS' TEACHERS NOTED HE PERFORM WELL ACADEMICALLY?

9 A. YES.

10 Q. YOU CAN TAKE THAT DOWN.

11 DR. GORDON, IS DIFFICULTY PASSING THE
12 USMLE ITSELF A SIGN THAT SOMEONE HAS AN IMPAIRMENT?

13 A. NO.

14 Q. OR THAT THEY ARE DISABLED?

15 A. NO.

16 Q. WE HAVE BEEN MORE INFORMAL -- AND THIS IS BY WAY
17 OF CONCLUSION -- WE HAVE BEEN MORE INFORMAL IN OUR
18 EXPERT DISCLOSURES, BUT I WANTED TO GIVE SOME SENSE OF
19 THE RECORDS THAT YOU HAVE REVIEWED.

20 DO THE RECORDS THAT YOU HAVE REVIEWED
21 INCLUDE DR. KITCHENS' REQUEST FOR ACCOMMODATIONS?

22 A. YES.

23 Q. RECORDS FROM BEREA COLLEGE DISABILITY SERVICES?

24 A. YES.

25 Q. AND THEIR HEALTH SERVICES?

1 A. YES.

2 Q. RECORDS FROM WHITE HOUSE CLINICS?

3 A. YES.

4 Q. RECORDS FROM BAPTIST HEALTH?

5 A. YES.

6 Q. THE CHRISTINA BACON REPORT AND SOURCE MATERIAL
7 IN HER FILE?

8 A. YES.

9 Q. MRS. BACON'S DEPOSITION TRANSCRIPT?

10 A. YES.

11 Q. THE DECLARATIONS AND TRANSCRIPTS FROM DR.
12 KITCHENS AND HIS MOTHER, THAT WE WERE JUST DISCUSSING?

13 A. YES.

14 Q. THE SCHOOL TRANSCRIPTS THAT WE JUST LOOKED AT?

15 A. THAT'S CORRECT.

16 Q. FROM THE DOCUMENTS AND INFORMATION YOU HAVE
17 REVIEWED, HAS DR. KITCHENS DEMONSTRATED THAT HE HAS A
18 MENTAL IMPAIRMENT OF ADHD?

19 A. NO.

20 Q. FROM THE DOCUMENTATION -- DOCUMENTS AND
21 INFORMATION YOU HAVE REVIEWED, HAS DR. KITCHENS
22 DEMONSTRATED HE IS SUBSTANTIALLY LIMITED TO MOST PEOPLE
23 IN HIS ABILITY TO CONCENTRATE?

24 A. HE HAS NOT.

25 Q. OR THINK?

1 A. NO.

2 Q. OR READ?

3 A. NO.

4 Q. OR PERFORM ANY OTHER MAJOR LIFE ACTIVITY
5 RELEVANT TO TAKING THE USMLE?

6 A. NO.

7 Q. FROM THE DOCUMENTS AND INFORMATION YOU HAVE
8 REVIEWED, HAS DR. KITCHENS DEMONSTRATED THAT HE NEEDS
9 ACCOMMODATIONS TO ACCESS THE USMLE?

10 A. HE HAS NOT.

11 MS. MEW: I DO NOT HAVE ANY OTHER
12 QUESTIONS. THANK YOU, DR. GORDON.

13 THE WITNESS: YOU'RE WELCOME.

14 THE COURT: WHY -- JUST AS A GOOD TIME,
15 WHY DON'T WE TAKE A 10-MINUTE BREAK AND THEN WHEN WE
16 COME BACK WE WILL PICK UP WITH THE CROSS EXAMINATION;
17 ALL RIGHT?

18 DR. KITCHENS: THANK YOU.

19 THE COURT: ALL RIGHT. 10 MINUTES.

20 (RECESS TAKEN.)

21 THE COURT: THERE ARE LAGGING PROBLEMS.
22 I THINK WHAT I AM GOING TO DO IS TURN MY CAMERA OFF.

23 I DON'T KNOW IF THAT WILL HELP SAVE DATA
24 ON THE CALL, BUT IF YOU SEE MY CAMERA OFF, THAT'S ALL I
25 AM DOING; ALL RIGHT?

1 DR. KITCHENS: I DID CHECK MY SPEED ON
2 THIS END AND IT'S WHERE IT IS SUPPOSED TO BE. I'M NOT
3 QUITE SURE -- I AM THE ONLY ONE THAT YOU HAVE HAD ISSUES
4 WITH?

5 DR. KITCHENS: YES.

6 THE COURT: SO FAR.

7 THE WITNESS: I'M SORRY.

8 THE COURT: I -- YOU KNOW, I DID -- THE
9 WAY -- ASSUMING IT DOESN'T GET TOO FREQUENT, THE WAY WE
10 HAVE BEEN DOING IT SO FAR WHERE MS. MEW, OR I GUESS DR.
11 KITCHENS WOULD MAYBE ASK YOU TO JUST REPEAT A CERTAIN
12 PART THAT DROPS OUT, THAT'S GOOD ENOUGH BECAUSE THE
13 QUESTIONER WILL KNOW WHAT PART OF THE ANSWER NEEDED TO
14 BE HEARD.

15 SO WE WILL KEEP UP WITH THAT ASSUMING IT
16 STAYS AT A MINIMUM LEVEL. ALL RIGHT.

17 LYNN, ARE YOU BACK WITH US?

18 THE REPORTER: YES, I AM, JUDGE.

19 THE COURT: OKAY.

20 DR. KITCHENS, YOU CAN BEGIN YOUR CROSS
21 EXAMINATION.

22 DR. KITCHENS: THANK YOU, YOUR HONOR.

23 CROSS-EXAMINATION

24 BY DR. KITCHENS:

25 Q. HI DR. GORDON. IT'S GOOD TO SEE YOU AGAIN.

1 A. GOOD TO SEE YOU, SIR.

2 Q. SO DR. GORDON, ISN'T IT TRUE THAT YOU STATED
3 EARLIER IN YOUR TESTIMONY THAT THE NBME WAS ONE OF THE
4 FIRST ORGANIZATIONS THAT YOU TESTIFIED -- THAT YOU
5 TESTIFIED AS AN EXPERT FOR?

6 A. I HAD ONLY BROUGHT UP THE NBME IS THE FIRST ONE
7 THAT I WAS A REVIEWER FOR, DR. KITCHENS.

8 Q. OKAY.

9 A. I ALSO --

10 Q. I WILL REPEAT MY QUESTION, DR. GORDON. I WILL
11 REPEAT MY QUESTION AGAIN, YOU FROZE UP. OKAY. I WILL
12 REPEAT IT AGAIN.

13 ISN'T IT TRUE THAT YOU STATED EARLIER IN
14 YOUR TESTIMONY THAT THE NBME WAS ONE OF THE FIRST
15 ORGANIZATIONS THAT YOU TESTIFIED AS AN EXPERT FOR?

16 A. WELL, WHEN I WAS -- WHEN I INDICATED, IT WAS THE
17 FIRST ORGANIZATION I DID REVIEWS FOR.

18 Q. OH, SORRY. FOR REVIEWS. ONE OF THE FIRST -- SO
19 IT'S CORRECT THAT IT WAS ONE OF THE FIRST ORGANIZATIONS
20 THAT YOU DID REVIEWS FOR; CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND HOW MANY YEARS HAVE YOU BEEN DOING REVIEWS
23 FOR THE NBME?

24 A. SINCE AROUND 1994, 1995.

25 Q. AND DR. GORDON, DID YOU NOT EVALUATE ME;

1 CORRECT?

2 A. THAT'S CORRECT.

3 Q. YOU WERE NOT PRESENT AT ANY TIME WHEN I WAS
4 BEING EVALUATED FOR ADHD, WERE YOU NOT; CORRECT?

5 A. CORRECT.

6 Q. YOU WERE NOT PRESENT AT ANY TIME WHEN I WAS
7 BEING EVALUATED FOR ANXIETY; CORRECT?

8 A. THAT'S CORRECT.

9 Q. YOU SPOKE EARLIER ABOUT THE CHADD ORGANIZATION.
10 WHEN WAS THE LAST TIME YOU WERE INVOLVED
11 IN ACTIVITIES WITHIN THE CHADD ORGANIZATION?

12 A. IT'S GOT TO BE AT LEAST TEN YEARS AGO, WHEN I
13 RETIRED FROM THE FULL-TIME FACULTY.

14 Q. UH-HUH. AND ARE YOU AN IN ANY SHAPE OR FORM
15 INVOLVED WITH THEM TODAY?

16 A. NO, I'M NOT.

17 Q. SO DR. GORDON, ISN'T IT TRUE THAT 75 PERCENT OF
18 CHILDREN WITH ADHD CONTINUE TO HAVE ADHD INTO ADULTHOOD?

19 A. WELL, THERE'S AN AVERAGE THERE. USUALLY WHAT WE
20 GIVE IS BETWEEN 60 AND 70, 75 PERCENT. IT DEPENDS ON --
21 I HATE TO SOUND LIKE A PROFESSOR HERE, BUT IT DEPENDS
22 ON THE CRITERIA USED, BUT IT'S SOMEWHERE A PERSISTENCE
23 RATE OF AROUND 60 TO 70 PERCENT.

24 Q. I WOULD LIKE, FOR REFERENCE HERE, CAN YOU PULL
25 UP, JUST FOR REFERENCE THE CHADD, PLEASE?

1 DR. GORDON -- AND SCROLL THROUGH, PLEASE,
2 FOR -- CAN YOU SEE AT THE BOTTOM -- SCROLL DOWN TO THE
3 VERY BOTTOM, PLEASE, AND ZOOM IN. AND SCROLL DOWN.

4 DO YOU SEE WHAT IT SAYS AT THE BOTTOM OF
5 THE SCREEN HERE, TO THE RIGHT -- CAN YOU HIGHLIGHT OVER
6 YES, HERE.

7 DO YOU RECOGNIZE THIS SYMBOL HERE?

8 A. I DO.

9 Q. AND OVER TO THE RIGHT, DO YOU RECOGNIZE -- YOU
10 SAID YOU WERE ON THE BOARD FOR THEM, DO YOU RECOGNIZE
11 THIS PARTICULAR LOCATION?

12 A. I DON'T. I DON'T. I THINK THEY HAVE MOVED AND
13 EVOLVED OVER THE YEARS. I WAS INVOLVED IN THE FIRST
14 DECADE OR SO.

15 Q. UH-HUH. THANK YOU. CAN YOU GO TO THE VERY TOP,
16 PLEASE?

17 DR. GORDON, CAN YOU SEE CLEARLY ON THE
18 SCREEN THE WORDS HERE, IN THE ORANGE BOX?

19 DR. GORDON -- OH, SORRY.

20 A. I AM SORRY. I INDICATED THAT I CAN SEE THAT THE
21 TEXT IN THE ORANGE BOX.

22 Q. THANK YOU. CAN YOU READ THE FIRST STANZA HERE,
23 THE FIRST LITTLE PARAGRAPH OR STANZA?

24 A. "MORE THAN 75 PERCENT OF CHILDREN WITH ADHD
25 CONTINUE TO EXPERIENCE SIGNIFICANT SYMPTOMS IN

1 ADULTHOOD. IN EARLY ADULTHOOD, ADHD MAY BE ASSOCIATED
2 WITH DEPRESSION, MOOD OR CONDUCT DISORDER, AND SUBSTANCE
3 ABUSE.

4 Q. THANK YOU FOR THAT, DR. GORDON.

5 YOU CAN CLOSE OUT OF THIS DOCUMENT HERE.

6 CAN YOU PLEASE PULL UP JX 1, PLEASE?

7 DR. GORDON, DO YOU RECOGNIZE THIS
8 DOCUMENT?

9 A. I DO.

10 Q. AND CAN YOU SCROLL DOWN JUST A LITTLE BIT,
11 PLEASE, THERE?

12 DR. GORDON, CAN YOU SEE IN THE FIRST --
13 ISN'T IT TRUE IN THE FIRST GRADE I WAS PLACED IN -- WITH
14 INDIVIDUALIZED INSTRUCTION?

15 A. I DO.

16 Q. ISN'T IT TRUE THAT IN THE FIRST GRADE I WAS PUT
17 INTO INDIVIDUALIZED INSTRUCTIONS; ISN'T THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. THANK YOU. YOU MAY CANCEL OUT OF THIS DOCUMENT,
20 PLEASE. IF WE CAN PULL UP DX 4.

21 AND DR. GORDON, WHEN YOU REVIEWED MS.
22 KING'S DECLARATION, DID YOU REVIEW IT ITS ENTIRETY?

23 A. YES.

24 Q. AND CAN WE GO TO -- DO YOU SEE HERE ON LINE 6,
25 DO YOU SEE THAT WORDING THERE?

1 A. I DO.

2 Q. NOW, ISN'T IT TRUE THAT A GRADE SCHOOL TEACHER
3 WOULD NOT RECOMMEND HOLDING BACK A STUDENT WITH HIGH
4 PERFORMING GRADES?

5 A. IT'S THE CASE THAT A TEACHER COULD RECOMMEND
6 HOLDING BACK BECAUSE HE OR SHE FELT THAT THE STUDENT
7 COULD USE SOME EXTRA TIME. IT'S NOT VERY COMMON
8 NOWADAYS BUT THERE ARE A VARIETY OF REASONS WHY THEY
9 WOULD RECOMMEND THAT.

10 Q. I'M SORRY, DR. GORDON. I'M SORRY.

11 MY QUESTION TO YOU WAS:

12 ISN'T IT TRUE THAT A GRADE SCHOOL TEACHER
13 WOULD NOT RECOMMEND HOLDING BACK A STUDENT WHO HAS HIGH
14 PERFORMING GRADES?

15 A. THAT'S NOT TRUE. THAT IS NOT TRUE.

16 Q. AND FOR CLARIFICATION THERE, ARE YOU SAYING --
17 CAN YOU -- ARE YOU SAYING THAT A GRADE SCHOOL TEACHER
18 WOULD RECOMMEND HOLDING BACK A STUDENT IF THEY HAVE HIGH
19 PERFORMING GRADES?

20 A. COULD POTENTIALLY RECOMMEND.

21 Q. BUT IN MOST CASES -- IN MOST SITUATIONS -- A --
22 BECAUSE OBVIOUSLY FOR WHATEVER -- THERE IS REASONS BUT
23 IN THE MAJORITY OF CASES, A SCHOOL TEACHER WOULD NOT
24 RECOMMEND THIS; CORRECT?

25 DR. GORDON, ARE YOU WITH US?

1 A. YES. I SAID NO, THAT'S NOT NECESSARILY THE
2 CASE.

3 Q. I'M SORRY. WE DIDN'T GET THAT ON THE RECORD.
4 YOU HAD FROZE UP ON US. I'M SORRY?

5 A. I AM SO SORRY.

6 Q. ITS OKAY. IT'S ALL RIGHT. SO FOR THE RECORD
7 YOU WERE SAYING THAT -- THAT IT IS TRUE, THAT A SCHOOL
8 TEACHER WOULD NOT RECOMMENDING HOLDING BACK A STUDENT
9 WITH HIGH PERFORMING GRADES CORRECT?

10 A. THAT IS NOT TRUE. YOU ARE INCORRECT IN MY
11 OPINION.

12 Q. SO YOU'RE -- YOU ARE SAYING THAT A TEACHER WOULD
13 RECOMMEND HOLDING BACK A STUDENT WITH HIGH PERFORMING
14 GRADES?

15 A. A TEACHER CAN RECOMMEND THAT IN SOME
16 CIRCUMSTANCES.

17 Q. OKAY. I THINK I GOT WHAT I NEED FROM THAT
18 QUESTION. THANK YOU.

19 THEN -- WE CAN BRING DOWN -- SO ISN'T IT
20 TRUE FOR -- I'M SORRY, IF WE CAN BRING THAT BACK UP, AND
21 GO BACK TO LINE 6 THERE. YES.

22 SO AFTER HEARING THAT PARTICULAR ANSWER
23 THERE, ISN'T IT TRUE THAT THE WORD HIGH, IN LINE 6, IS
24 MOST LIKELY AN ERROR CONSIDERING MS. KING'S COMPLETE
25 DECLARATION?

1 A. I CAN ONLY READ WHAT'S THERE.

2 Q. RIGHT. BUT YOU SAID EARLIER THAT YOU READ HER
3 ENTIRE DECLARATION; CORRECT?

4 A. YES.

5 Q. SO WITH YOUR LEVEL OF EXPERTISE AND BACKGROUND,
6 YOUR INTERPRETATION OF THIS LINE, ISN'T IT TRUE THAT
7 THIS COULD BE GIVEN AN ERROR DUE TO THE ENTIRETY OF THE
8 DOCUMENT?

9 A. I SUPPOSE ANYTHING IS POSSIBLE BUT YOU WERE A
10 HIGH PERFORMER. YOU DID WELL IN SCHOOL. SO IT WOULD
11 SEEM THAT -- I WOULD NOT PICK THAT UP AS A TYPO.

12 Q. THANK YOU, DR. GORDON, FOR THAT. IF YOU CAN
13 CLOSE OUT OF THIS ONE, PLEASE.

14 DR. GORDON, YOU -- EARLIER -- ISN'T IT
15 TRUE THAT YOU TESTIFIED DURING THE PRELIMINARY HEARING
16 AND ALSO DURING YOUR TESTIMONY TODAY THAT AN ADULT
17 CANNOT BE DIAGNOSED WITH ADHD?

18 A. AN ADULT CAN BE DIAGNOSED WITH ADHD.

19 Q. ISN'T IT TRUE THAT YOU TESTIFIED IN THE
20 PRELIMINARY HEARING AND ALSO TODAY THAT AN ADULT WHO WAS
21 NOT DIAGNOSED WITH ADHD AS A KID CANNOT BE DIAGNOSED
22 WITH ADHD AS AN ADULT?

23 A. I DID NOT SAY THAT.

24 Q. WELL, I DON'T HAVE THE RECORD FOR TODAY. SO DR.
25 GORDON, I GUESS I WOULD LIKE TO YOU ASK THIS HERE:

1 IF -- IF AN ADULT WAS NOT DIAGNOSED WITH
2 ADHD AS A CHILD, COULD THEY BE DIAGNOSED WITH ADHD AS AN
3 ADULT?

4 A. YES.

5 Q. BUT THAT'S NOT WHAT YOU SAID EARLIER.

6 A. NO, YOU SAID DIAGNOSED. BE VERY CLEAR. IF
7 SOMEBODY -- WHETHER OR NOT THEY ARE DIAGNOSED EARLY ON,
8 IF THEY HAD AN ADHD TYPE LIFE HISTORY AND HISTORY OF
9 FUNCTIONAL LIMITATIONS, IF THEY HAVE THAT, THEN YES,
10 THEY CAN BE DIAGNOSED LATER ON, WHETHER OR NOT THEY WERE
11 DIAGNOSED EARLIER ON.

12 I DON'T CARE ABOUT WHETHER THE PERSON WAS
13 DIAGNOSED OR NOT, I CARE WHETHER THEY SHOWED FUNCTIONAL
14 LIMITATIONS ASSOCIATED WITH ADHD.

15 Q. SO -- THANK YOU FOR THAT. SO I WILL CLARIFY
16 EVEN MORE FOR YOU, BE MORE SPECIFIC.

17 ISN'T IT TRUE THAT YOU TESTIFIED EARLIER
18 TODAY AND IN THE PRELIMINARY INJUNCTION THAT AN ADULT
19 CANNOT HAVE ADHD IF THEY DID NOT HAVE IT WHEN THEY -- IF
20 THEY WERE NOT DIAGNOSED WITH IT DURING CHILDHOOD.

21 A. NO, I'M NOT SAYING THAT AT ALL.

22 Q. OKAY. LET'S SEE HERE. AND I'M NOT SURE IF THIS
23 IS IN THE RULES OR NOT WHERE THE COURT REPORTER CAN
24 ACTUALLY GO BACK AND LOOK AT THAT OR, YOUR HONOR, DID
25 YOU GET WHAT YOU NEED FROM IT FOR TIME SAKE?

1 THE COURT: YEAH, IT'S NOT -- BECAUSE
2 SOMETIMES YOU HAVE A LIVE TRANSCRIPT BUT WE DON'T. IT'S
3 NOT REALLY PRACTICAL TO DO ANYTHING ABOUT THAT. SO THE
4 BEST WAY TO PROCEED IS THE WAY YOU HAVE BEEN, DR.
5 KITCHENS WHERE, YOU KNOW, IF YOU FEEL AS THOUGH THERE IS
6 INCONSISTENCIES YOU CAN ASK THE QUESTIONS THAT YOU WOULD
7 LIKE TO ASK TO ATTEMPT TO ESTABLISH THAT AND THEN THE
8 RECORD WILL SHOW WHAT IT SHOWS.

9 DR. KITCHENS: YES, YOUR HONOR. THANK
10 YOU.

11 NO FURTHER QUESTIONS, YOUR HONOR.

12 THE COURT: ALL RIGHT. MS. MEW, ANY
13 REDIRECT?

14 MS. MEW: NO, YOUR HONOR.

15 THE COURT: OKAY.

16 DR. GORDON, YOU HAVE A LITTLE TIME FOR A
17 FEW QUESTIONS FROM ME?

18 THE WITNESS: ABSOLUTELY.

19 BY THE COURT:

20 Q. OKAY. WERE YOU -- DID YOU LISTEN IN ON THE
21 TRIAL? I DIDN'T TAKE NOTE OF WHETHER YOU WERE PRESENT
22 FOR THE BEGINNING OF THE TRIAL.

23 A. I WAS NOT. I JUST JOINED IT AT 1 O'CLOCK TODAY.

24 Q. AT 1 O'CLOCK TODAY? OKAY.

25 LET'S SEE WERE YOU INFORMED BEFORE YOU

1 TESTIFIED ABOUT THE CONTENT OF ANY OF THE TESTIMONY OF
2 DR. KITCHENS, OR ANY OF HIS WITNESSES IN THE TRIAL?

3 A. TODAY?

4 Q. YES.

5 A. NO. NO, NO, NO.

6 Q. OKAY. LET'S SEE, A FEW QUESTIONS.

7 JUST TO MY UNDERSTANDING OF THE LAY OF
8 THE LAND, IT'S POSSIBLE -- WITH DR. KITCHENS
9 SPECIFICALLY, IT'S POSSIBLE THAT AN ADHA DIAGNOSIS
10 SHOULD HAVE BEEN MADE WHEN HE WAS A CHILD BUT WASN'T;
11 RIGHT?

12 A. YES.

13 Q. OKAY. AND ONE QUESTION -- I GUESS, ANOTHER
14 QUESTION IS, I THOUGHT I HEARD YOU SAY THAT SOMEONE WHO
15 IS IMPAIRED UNDER THE ADA STANDARD WOULD NEED TO HAVE
16 ACCOMMODATIONS, AND I WAS TRYING TO -- I WANT TO UNPACK
17 THAT A LITTLE BIT.

18 HAVE YOU EVER REACHED AN OPINION OR THE
19 VIEW THAT AN ACCOMMODATION WAS APPROPRIATE UPON REQUEST
20 WHEN NO ACCOMMODATION HAD EVER BEEN GIVEN BEFORE?

21 A. IT IS POSSIBLE THAT THAT CAN BE THE CASE. IT'S
22 A RARE CIRCUMSTANCE, ESPECIALLY AT THE LEVEL OF SOMEBODY
23 IN MEDICAL SCHOOL. BUT THERE ARE PEOPLE WHO WERE NOT
24 DIAGNOSED, DID VERY VERY POORLY WITHOUT ACCOMMODATIONS
25 ON TESTS, THEN MAY HAVE GOTTEN THEM OR PLACED ON

1 MEDICATION, AND THEN DID WELL ENOUGH TO GET INTO MEDICAL
2 SCHOOL AND TO THE POINT THAT THEY COULD TAKE THE USMLE.

3 SO THAT'S POSSIBLE. YOU DON'T SEE IT
4 VERY MUCH, ESPECIALLY NOWADAYS WHEN THERE IS SO MUCH
5 MORE AWARENESS ABOUT ADHD. IT'S POSSIBLE.

6 MY MAIN POINT THAT IS SOMEBODY WITH ADHD
7 LIKELY HAS HAD THE NEED FOR ACCOMMODATIONS OVER MUCH OF
8 THEIR EDUCATION, IF NOT ALL OF IT.

9 Q. OKAY. NOW, SUPPOSE I WERE TO ACCEPT THAT THERE
10 WERE VERY GOOD REASONS, NON MEDICAL REASONS, WHY DR.
11 KITCHENS DID NOT HAVE A DIAGNOSIS OF ADHD, OR ANY
12 ACCOMMODATIONS IN HIS CHILDHOOD.

13 AND SUPPOSE I REACHED THAT CONCLUSION, I
14 CAN ASK YOU TO ACCEPT THAT AS A HYPOTHETICAL.

15 WHAT, AS AN ADULT LACKING THAT HISTORY,
16 WHAT ARE THE APPROPRIATE STEPS TO TAKE IN ORDER TO
17 DECIDE WHETHER THAT PATIENT DOES HAVE ADHD AND DOES NEED
18 ACCOMMODATIONS?

19 A. I THINK WE NEED TO CONTINUE TO MAKE THE
20 DISTINCTION BETWEEN GETTING A DIAGNOSIS AND THE BEHAVIOR
21 ASSOCIATED WITH THE SYMPTOMS AND IMPAIRMENT ASSOCIATED
22 WITH THE DISORDER.

23 JUST TO BE REALLY CLEAR, SOMEONE CAN NOT
24 HAVE A DIAGNOSE, SHOULD HAVE HAD IT BUT DIDN'T, BUT
25 NONETHELESS THE REASON THEY SHOULD HAVE HAD THE

1 DIAGNOSIS AND ACCOMMODATIONS IS BECAUSE THEY WERE
2 IMPAIRED; THEY HAD FUNCTIONAL LIMITATIONS.

3 AND SO IF IT'S THE CASE THAT YOU CAN LOOK
4 BACK AND SEE THROUGH THE PERSON'S LIFE THAT THEY SHOULD
5 HAVE BEEN DIAGNOSED, THEY SHOULD HAVE GOTTEN
6 ACCOMMODATIONS, THEN AS A CLINICIAN YOU FEEL VERY GOOD
7 ABOUT THE FACT THAT YOU SAY TO THAT PERSON, LOOK, YOU
8 HAVE HAD PROBLEMS AND THESE ARE ACTUALLY RISING TO THE
9 LEVEL OF DISABILITY OR DISORDER. YOU HAVE OPTIONS HERE
10 THAT SHOULD HELP YOU.

11 IF YOU ARE WITH SOMEBODY WHO SAYS, LOOK,
12 I NEVER GOT A DIAGNOSIS. THERE ARE -- YOU SAY, OKAY,
13 BUT REGARDLESS OF DIAGNOSIS, NO DIAGNOSIS, WHERE WERE
14 THE PROBLEMS? HOW DID IT INTERFERE WITH YOUR LIFE? AND
15 AGAIN, BECAUSE ADHD DOES NOT JUST SHOW UP LIKE THE FLU,
16 THERE HAS GOT TO BE SOME EVIDENCE OF IT ALONG THE WAY.

17 Q. ALL RIGHT. WELL, ONE FORM THAT EVIDENCE MIGHT
18 TAKE, THAT WE DISCUSSED, IS ACADEMIC TRANSCRIPTS,
19 ACADEMIC HISTORY; RIGHT?

20 A. THAT'S CORRECT.

21 Q. AND I THINK I UNDERSTOOD YOUR TESTIMONY TO SAY
22 THAT WHEN YOU LOOKED AT DR. KITCHENS' ACADEMIC HISTORY
23 YOU DID NOT FIND IT PARTICULARLY PERSUASIVE BECAUSE HE
24 GENERALLY HAD ACADEMIC SUCCESS AND WAS ABLE TO GET INTO
25 MEDICAL SCHOOL AND GRADUATE FROM MEDICAL SCHOOL; RIGHT?

1 A. CORRECT.

2 Q. WELL, BUT NONETHELESS, IT IS POSSIBLE FOR
3 SOMEONE TO HAVE UNDIAGNOSED ADHD OR EVEN FUNCTIONAL --
4 LET'S JUST SAY IT'S POSSIBLE FOR SOMEONE TO HAVE
5 FUNCTIONAL LIMITATIONS AND NONETHELESS HAVE A DEGREE OF
6 ACADEMIC SUCCESS; RIGHT?

7 A. NO, I DON'T BELIEVE SO. HOW CAN YOU BE
8 SUCCESSFUL ACADEMICALLY IF YOU SAY YOU HAVE A DISORDER
9 THAT BY DEFINITION LIMITS YOUR ABILITY TO BE SUCCESSFUL
10 ACADEMICALLY.

11 ITS LIKE SOMEBODY SAYING, WELL, I CAN
12 WALK FINE -- YOU CAN'T INDICATE THAT YOU HAVE A
13 DISABILITY THAT LEADS TO POOR ACHIEVEMENT, BUT HAVE GOOD
14 ACHIEVEMENT -- (UNINTELLIGIBLE) --

15
16 Q. WELL, MAYBE WE ARE MIXING OUR ADJECTIVES. I
17 MEAN, YOU KNOW AS WELL AS I DO THAT IN THE LOVE CASE IT
18 WAS ESTABLISHED THAT YOU COULD HAVE, YOU KNOW, YOU COULD
19 HAVE SOME ACADEMIC HISTORY THAT WAS PRETTY GOOD AND YOU
20 COULD GET AN AVERAGE SCHOOL ON THE LSAT'S BUT
21 NONETHELESS POTENTIALLY HAVE FUNCTIONAL IMPAIRMENT;
22 RIGHT?

23 A. WELL, ON THE LOVE CASE I DON'T WANT TO DISCUSS
24 THE LAW WITH YOU, SIR -- BUT -- SO I CAN'T SPEAK TO
25 THAT -- (UNINTELLIGIBLE) --

1 Q. SORRY, DOCTOR I MISSED YOUR ANSWER. AFTER
2 SAYING YOU DIDN'T WANT TO TALK ABOUT THE LAW, WHICH I
3 APPRECIATE, THEN I MISSED YOUR ANSWER AFTER THAT?

4 A. YOU KNOW, THAT I TESTIFIED IN THE LOVE CASE?

5 Q. I KNOW LOTS OF THINGS, DR. GORDON.

6 A. I JUST DON'T KNOW IF I SHOULD BE TELLING YOU
7 THAT I WAS INVOLVED IN THAT CASE.

8 BUT LOOK, HE -- I DON'T REMEMBER ALL THE
9 DETAILS IN MR. LOVE'S CASE, BUT HE WAS AN ADEQUATELY
10 FUNCTIONING SOLID FUNCTIONING INDIVIDUAL WHO, YEAH, HAD
11 SOME -- HAD SOME CLINICIANS WHO SAID THAT HE HAD SOME
12 DIFFICULTIES, BUT HE WAS A GOOD STUDENT. THAT'S WHY I
13 -- HE DIDN'T PREVAIL IN THE CASE.

14 Q. SO HOW MANY TIMES HAVE YOU TESTIFIED IN
15 ADMINISTRATIVE HEARINGS OR TRIALS ON ISSUES OF ADHD?

16 A. I THINK IT'S IN MY DATA. I WOULD SAY FOUR OR
17 FIVE TIMES OVER THE YEARS.

18 Q. ALL RIGHT. HAVE YOU EVER TESTIFIED FOR A
19 PLAINTIFF?

20 A. NO. I HAVE PREPARED DOCUMENTATION FOR PATIENTS
21 BUT I HAVE NEVER BEEN IN COURT AROUND ONE.

22 Q. WHEN I LISTEN TO YOUR TESTIMONY ONE THING I
23 HEARD IS, BASED ON LOOKING AT DR. KITCHENS' HISTORY,
24 IT'S -- YOU CONCLUDED IT DID NOT LOOK LIKE DR. KITCHENS
25 REQUIRED ACCOMMODATIONS AND I THINK YOU USED THE WORD

1 REQUIRED. AT LEAST I WROTE IT DOWN WITH QUOTES ON IT.

2 AND SO I GUESS THE QUESTION I HAVE FOR
3 YOU, TO MAKE SURE YOU ARE COMING AT THIS FROM THE
4 PERSPECTIVE I THINK IS HELPFUL, IT'S -- THE STANDARD IS
5 NOT THAT ACCOMMODATIONS ARE REQUIRED; RIGHT?

6 A. MY COMMENT -- MY USE OF THE WORD REQUIRED IS
7 THAT TO BE ABLE TO DO WELL HE DID NOT NEED EXTENDED TIME
8 ON TESTS. HE DID PERFECTLY WELL FOR HIMSELF, UNDER
9 STANDARD ADMINISTRATION UNDER WHATEVER TESTS HE TOOK
10 PRIOR TO -- TO THESE CURRENT TESTS.

11 SO WHEN I MEANT REQUIRED, SIR, I JUST
12 MEANT THAT HE WAS ABLE TO DO WELL. IT'S LIKE HE WALKED
13 PERFECTLY WELL WITHOUT A CRUTCH. HE DID NOT NEED -- HE
14 DID NOT REQUIRE THE CRUTCH.

15 Q. ALL RIGHT. IS IT CORRECT, I DIDN'T -- I DON'T
16 KNOW THAT I HEARD THIS DISCUSSED, IS IT CORRECT THAT AN
17 ADDERALL PRESCRIPTION IS AN INDICATOR OF A FUNCTIONAL
18 IMPAIRMENT?

19 A. IT ISN'T AND THEN, I THINK IT PUT IT THIS WAY IN
20 MY EXPERT OPINION, THAT WAS PUT TO BED LONG AGO AS
21 DIAGNOSTIC TOOL FOR ADHD. THE REASON BEING IS THAT
22 UNLESS YOU HAVE A PSYCHOSIS OR YOU ARE SEVERELY ANXIOUS,
23 THE CHANCES VERY VERY HIGH THAT TAKING ADDERALL WILL
24 IMPROVE -- A, WILL IMPROVE YOUR ABILITY TO ATTEND.

25 AND ALSO, THE EVIDENCE IS VERY VERY CLEAR

1 THAT MANY PEOPLE TAKE STIMULANTS JUST FOR THAT REASON
2 JUST TO ENHANCE THEIR PERFORMANCE IN THOSE SITUATIONS
3 REQUIRING THEM TO ATTEND.

4 Q. BUT IT'S AT LEAST -- I MEAN, IT'S AT LEAST
5 CONSISTENT WITH THE IDEA THAT THERE IS A FUNCTIONAL
6 IMPAIRMENT BECAUSE A PERSON CAPABLE OF WRITING A
7 PRESCRIPTION FOR ADDERALL DEEMED IT APPROPRIATE; RIGHT?

8 A. I NEED TO BREAK THOSE TWO THINGS APART.
9 PROVIDERS WILL WRITE PRESCRIPTIONS FOR ADDERALL, OR ANY
10 OF THE STIMULANTS, BECAUSE THEY FEEL THEIR CLIENTS WANT
11 IT AND MIGHT DO BETTER WITH IT.

12 THAT'S ONE OF THE REASONS I HAVE BEEN ON
13 TASK FORCES FOR THE UNIVERSITY TO CUT DOWN ON THE
14 PRESCRIPTION OF MEDICATIONS THROUGH THE HEALTH SERVICE
15 TO STUDENTS WHO ARE SEEKING MEDICATIONS TO HELP THEM
16 STUDY, ET CETERA.

17 THE MERE FACT THAT SOMEBODY GETS AN
18 ADDERALL PRESCRIPTION DOES NOT MEAN THEY ARE
19 FUNCTIONALLY LIMITED. IT JUST MEANS THAT SOMEBODY FEELS
20 -- IT MAY BE THAT THAT'S WHY THEY GOT IT, BUT ALSO IT'S
21 ALSO PRESCRIBED IT ENHANCES THE ABILITY TO ATTEND.

22 IT'S THE SAME WITH HUMAN GROWTH HORMONE.
23 YOU KNOW, NOT EVERY CHILD WHO GETS HUMAN GROWTH HORMONE
24 IS ABNORMALLY SHORT. THERE ARE PARENTS WHO HAVE FOUND
25 PHYSICIANS TO GIVE THEIR CHILDREN HUMAN GROWTH HORMONE

1 BECAUSE THEY WANT THEM TO BE TALLER, EVEN THOUGH THEY
2 ARE WITHIN AN AVERAGE RANGE OF HEIGHT.

3 Q. THE QUESTION ABOUT DR. BACON'S REPORT AND I
4 SUPPOSE TESTIMONY THAT YOU REVIEWED, BUT SPECIFIC TO THE
5 REPORT.

6 I THINK I UNDERSTOOD YOU TO BE
7 DISCOUNTING THE A-DIVA 2 ANALYSIS BECAUSE -- AT LEAST IN
8 PART BECAUSE IT WAS DONE IN THE MIDST OF LITIGATION.

9 DID I UNDERSTAND THAT CORRECTLY?

10 A. THAT I ADDED THAT ON. I WAS JUST MAKING THE
11 POINT THAT A FORM LIKE THE A-DIVA, THE OCCIVA, ANY OF
12 THE RATINGS SCALES WE USE, AND I USE THE OCCIVA FOR WHAT
13 ITS WORTH. WE JUST NEED TO KEEP IN MIND THAT THOSE ARE
14 JUST FORMATTINGS OF OPINION.

15 THE FACT THAT IT CAME DURING LITIGATION,
16 WELL, THERE ARE REASONS AGAIN, WHY WE HAVE SYMPTOM
17 VALIDITY TESTS, BECAUSE ITS HUMAN NATURE. IF THERE IS
18 SOME BENEFIT TO A RESPONSE OR A PERFORMANCE BECAUSE OF
19 SECONDARY GAIN, WHETHER ITS INTENTIONAL OR NOT, JUST
20 BEING HUMAN YOU NEED TO MAKE SURE THAT IT'S A VALID
21 TEST.

22 Q. EVERY SINGLE APPLICANT FOR -- OR REQUESTOR FOR
23 REASONABLE ACCOMMODATIONS IS IS SEEKING A BENEFIT;
24 RIGHT?

25 A. THAT'S CORRECT.

1 Q. SO AND WHAT IS A SYMPTOM VALIDITY TEST? WHAT
2 WOULD THAT INVOLVE IN THIS SITUATION?

3 A. THERE ARE A VARIETY OF THEM. I HAPPEN TO LIKE
4 WHAT'S CALLED THE TOMM, THE T-O-M-M, TEST OF MEMORY AND
5 MALINGERING. THE CONCEPT IS THIS:

6 A PERSON IS GIVEN A TASK TO DO, LIKE
7 REMEMBERING A VERY FEW NUMBER OF DIGITS OR LETTERS OR
8 PICTURES, AND THEY ARE ASKED TO DO THAT TO THE BEST OF
9 THEIR ABILITY. THESE ARE TASKS THAT ARE SO SIMPLE THAT
10 PATIENTS WHO ARE TESTED WITHIN -- WHO HAVE DEMONSTRATIVE
11 BRAIN INJURY STILL DO WELL ON THEM.

12 SO THE IDEA OF IT IS THAT IF YOU DO WELL
13 ON THIS -- I'M SORRY IF YOU DO POORLY ON THESE TESTS
14 THAT ARE SO SIMPLE, THAT EVEN A BRAIN INJURED PERSON
15 COULD DO IT, THAT MIGHT MEAN YOU ARE MALINGERING.

16 Q. HOW MUCH -- ABOUT APPROXIMATELY HOW MUCH TIME
17 AND ATTENTION FROM A TRAINED ADMINISTERING PERSON WOULD
18 IT REQUIRE TO DO A SYMPTOM VALIDITY TEST?

19 A. TEN MINUTES.

20 Q. IS IT YOUR EXPECTATION THAT THAT -- WELL, LET ME
21 ASK IT THIS WAY:

22 IS THAT SOMETHING YOU WOULD ALWAYS DO?

23 A. OH, ABSOLUTELY. ITS STANDARD PRACTICE. IT'S
24 NOT JUST ME. IT'S STANDARD ACCEPTED PRACTICE,
25 PARTICULARLY IF THERE IS ANY LEGAL COMPONENT.

1 Q. ONE SECOND. YOU MENTIONED -- THIS CAME UP JUST
2 WHEN YOU AND I WERE HAVING A DISCUSSION A FEW MINUTES
3 AGO. I WANT TO COME BACK TO IT.

4 THERE HAS BEEN SOME DISCUSSION HERE ABOUT
5 THE VALIDITY OF -- THE EXISTENCE OR VALIDITY OF AN ADHA
6 DIAGNOSIS, BUT THEN THERE IS ALSO A RELATED, I SUPPOSE,
7 BUT LEGALLY DIFFERENT QUESTION OF THE ADA STANDARD,
8 WHETHER THERE IS A SUBSTANTIAL IMPAIRMENT.

9 DO YOU -- WHAT -- WHEN YOU DID YOUR
10 ANALYSIS AND YOU REACHED YOUR OPINION, I THINK YOU SAID
11 THIS BUT YOU REACHED YOUR OPINION THAT THERE WAS NO
12 SUBSTANTIAL IMPAIRMENT. YOU DIDN'T STOP AT THE ADHD
13 PART; RIGHT?

14 A. I CAN STOP IN THIS CASE, IN DR. KITCHENS' CASE,
15 AT THE DIAGNOSTIC, THE DSM-5 CLINICALLY SIGNIFICANT
16 IMPAIRMENT. I DON'T NEED TO GO TO THE LEGAL DEFINITION,
17 OR CONSTRUAL OF IT.

18 I LOOKED AT DR. KITCHENS' RECORD REMEMBER
19 AND SAW MUCH MORE THAT REFLECTED COMPETENCE THAN
20 INCOMPETENCE. I COULD NOT FIND ANY SIGNIFICANT
21 IMPAIRMENT. THE MAN HAS DONE EXTREMELY WELL FOR
22 HIMSELF, TO HIS CREDIT.

23 SO YEAH, I DIDN'T NEED TO GET TO GENERAL
24 POPULATION, ALTHOUGH I HAVE DONE THIS LONG ENOUGH I
25 REALIZE THAT THAT'S PART OF THE EQUATION FOR YOU.

1 THE COURT: OKAY. THANKS FOR YOUR
2 PATIENCE. I APPRECIATE IT. NOW LET ME, IN THE SPIRIT
3 OF FAIRNESS, I AM GOING TO LET YOUR LAWYERS ASK ANY
4 FOLLOW-UP QUESTIONS IF THEY FEEL THE NEED. AND LET ME
5 START WITH MS. MEW, AND THEN WE WILL GO TO DR. KITCHENS.

6 MS. MEW: I HAVE NO FURTHER QUESTIONS,
7 YOUR HONOR.

8 THE COURT: ALL RIGHT. DR. KITCHENS,
9 ANYTHING FURTHER?

10 DR. KITCHENS: NO FURTHER QUESTIONS, YOUR
11 HONOR, SORRY, I WAS MUTED.

12 THE COURT: ALL RIGHT. THANK YOU FOR
13 YOUR PATIENCE, DR. GORDON, AND YOUR TIME.

14 AND YOU MAY BE EXCUSED.

15 THE WITNESS: THANK YOU VERY MUCH. TAKE
16 CARE.

17 THE COURT: ALL RIGHT. HOPEFULLY THE
18 FREEZING ISSUES ARE ISOLATED TO DR. GORDON. WE'LL KEEP
19 OUR FINGERS CROSSED.

20 MS. MEW: I APPRECIATE YOUR PATIENCE AND
21 MY APOLOGIES TO YOU AND DR. KITCHENS.

22 THE COURT: THINK ABOUT ALL OF THE TIME
23 AND MONEY AND ENERGY WE'RE SAVING BY DOING IT IN VIDEO
24 AND NOT IN PERSON. A LITTLE GLITCH HERE AND THERE IS
25 OKAY.

1 MS. MEW: THERE'S ONLY SO MUCH WE CAN
2 CONTROL; RIGHT?

3 DR. KITCHENS: EXACTLY.

4 THE COURT: ALL RIGHT. MS. MEW, YOU MAY
5 PROCEED.

6 MS. MEW: YES, YOUR HONOR, THAT WENT
7 FASTER THAN I THOUGHT SO I NEED TO JUST -- IF PEOPLE
8 JUST -- I NEED TO CALL -- I LITERALLY NEED TO CALL, ON
9 THE PHONE, THE NEXT WITNESS TO GET THEM ON BOARD.

10 THE COURT: SURE. YOU CAN JUST MUTE
11 YOURSELF AND TAKE CARE OF THAT.

12 (BRIEF PAUSE IN THE PROCEEDING.)

13 MS. MEW: DR. KITCHENS, IT WILL BE LUCIA
14 MCGEEHAN COMING ON. I AM WAITING FOR HER TO JOIN UP.

15 DR. KITCHENS: THANK YOU.

16 MS. MEW: THINGS MOVED A LITTLE FASTER
17 THAN I THOUGHT.

18 THE COURT: MS. MEW, YOU MAY CALL THE
19 WITNESS.

20 MS. MEW: THE NATIONAL BOARD OF MEDICAL
21 EXAMINERS CALLS LUCIA MCGEEHAN.

22 THE COURT: HELLO.

23 AND LYNN, WOULD YOU PLEASE SWEAR IN THE
24 WITNESS.

25 (DEFENSE WITNESS, LUCIA MCGEEHAN, IS

1 SWORN.)

2 THE REPORTER: CAN YOU STATE AND SPELL
3 YOUR NAME FOR THE RECORD.

4 THE WITNESS: LUCIA MCGEEHAN, L-U-C-I-A
5 M-C-G-E-E-H-A-N.

6 THE COURT: THANK YOU.

7 DIRECT EXAMINATION

8 BY MS. MEW:

9 Q. GOOD AFTERNOON, DR. MCGEEHAN.

10 A. GOOD AFTERNOON.

11 Q. WHAT IS YOUR CURRENT POSITION?

12 A. MY CURRENT POSITION IS MANAGER OF EXAMINEE
13 ACCOMMODATIONS IN THE DISABILITY SERVICES UNIT AT THE
14 NATIONAL BOARD OF MEDICAL EXAMINERS.

15 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

16 A. I EARNED MY BACHELOR'S DEGREE FROM AUBURN
17 UNIVERSITY, AND I EARNED A MASTERS AND DOCTORATE OF
18 PHILOSOPHY DEGREE FROM THE UNIVERSITY OF GEORGIA, WITH A
19 FOCUS IN SCHOOL PSYCHOLOGY.

20 Q. DO YOU HAVE ANY CERTIFICATIONS OR LICENSES?

21 A. YES. I AM A NATIONALLY CERTIFIED SCHOOL
22 PSYCHOLOGIST BY THE NATIONAL ASSOCIATION OF SCHOOL
23 PSYCHOLOGISTS. AND I AM A LICENSED PSYCHOLOGIST BY THE
24 STATE OF PENNSYLVANIA.

25 Q. AND CAN YOU BRIEFLY DESCRIBE YOUR WORK

1 EXPERIENCE AS A PSYCHOLOGIST?

2 A. YES. I COMPLETED A PRE DOCTORAL INTERNSHIP WITH
3 LOUDOUN COUNTY PUBLIC SCHOOLS, WHERE I SERVED AS A
4 SCHOOL PSYCHOLOGIST FOR AN ELEMENTARY SCHOOL AND A HIGH
5 SCHOOL. IN THAT ROLE I COMPLETED PSYCHOLOGICAL
6 EVALUATIONS, AND I ELIGIBILITY DETERMINATIONS. I ALSO
7 COMPLETED SECTION 504 DETERMINATIONS.

8 DURING MY TIME AT LOUDOUN COUNTY, I TOOK
9 A POSITION WITH EASTERN UNIVERSITY AS AN ASSISTANT
10 PROFESSOR IN THE CAMPOLO COLLEGE OF GRADUATE AND
11 PROFESSIONAL STUDIES, WHERE I TAUGHT SCHOOL PSYCHOLOGY,
12 SCHOOL COUNSELING, AND CLINICAL COUNSELING MASTERS LEVEL
13 STUDENTS.

14 I TAUGHT GENERAL COURSE WORK AND TAUGHT
15 SPECIFIC COURSE WORK IN SCHOOL PSYCHOLOGY. I COMPLETED
16 A POST DOCTORAL INTERNSHIP WITH MAIN LINE THERAPY
17 SOLUTIONS, AND I ALSO WORKED FOR MAIN LINE THERAPY
18 SELECTIONS AS A PSYCHOLOGIST WHERE I PROVIDED THERAPY TO
19 CHILDREN, ADOLESCENTS, AND ADULTS, AND I ALSO CONDUCTED
20 COMPREHENSIVE PSYCHOEDUCATIONAL EVALUATIONS FOR
21 CHILDREN, ADOLESCENTS, AND ADULTS.

22 AND AFTER THAT, I BECAME A DISABILITY
23 ASSESSMENT ANALYST AT THE NATIONAL BOARD OF MEDICAL
24 EXAMINERS AND I HAVE BEEN WITH THE BOARD EVER SINCE.

25 Q. WHEN DID YOU START WORKING WITH NBME?

1 A. IN 2016.

2 Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR ROLE AS
3 MANAGER OF EXAMINEE ACCOMMODATIONS?

4 A. IN MY ROLE I AM RESPONSIBLE FOR SUPERVISING,
5 MENTORING, AND TRAINING THE DISABILITY ASSESSMENT
6 ANALYSTS. I AM ALSO RESPONSIBLE FOR REVIEWING REQUESTS
7 FOR TEST ACCOMMODATIONS FOR THE UNITED STATES MEDICAL
8 LICENSING EXAMINATION.

9 AND I SUPPORT SPECIAL PROJECTS, I WORK
10 ALONGSIDE THE DIRECTOR WORKING TO IMPROVE PROCESSES AND
11 EFFICIENCIES TO SUPPORT THE CUSTOMER EXPERIENCE.

12 Q. AND I BELIEVE YOU SAID YOU HAVE BEEN WITH NBME
13 FOR SEVEN YEARS.

14 SO HAVE BEEN REVIEWING ACCOMMODATIONS
15 REQUESTS FOR SEVEN YEARS?

16 A. YES.

17 Q. AMONG THOSE REQUESTS ARE REQUESTS BASED ON ADHD?

18 A. YES, REQUESTS BASED -- YES, I REVIEW REQUESTS
19 BASED ON THE IMPAIRMENTS THAT INDIVIDUAL REPORTS AND
20 THAT CAN BE PHYSICAL OR MENTAL IMPAIRMENTS, WHICH CAN
21 INCLUDE NEURODEVELOPMENTAL DISABILITIES, MEDICAL
22 CONDITIONS, PSYCHIATRIC IMPAIRMENTS, JUST TO SPECIFY.

23 MS. MEW: YOUR HONOR, DR. MCGEEHAN IS
24 TESTIFYING IN PART AS A FACT WITNESS, BUT WE ALSO OFFER
25 HER AS AN EXPERT ON CONDUCTING PSYCHOLOGICAL EVALUATIONS

1 ON MENTAL DISORDERS, INCLUDING ADHD AND ANXIETY, AND
2 REVIEWING REQUESTS FOR TESTING ACCOMMODATIONS?

3 YOU ARE ON MUTE, DR. KITCHENS.

4 YOU ARE STILL ON MUTE. WE HAVE NOT HEARD
5 YOU ON THE RECORD.

6 DR. KITCHENS: NO OBJECTIONS.

7 THE COURT: YES, THAT'S FINE AND THE
8 WITNESS MAY TESTIFY AS YOU SUGGEST, MS. MEW. IT WILL BE
9 HELPFUL TO ME PROBABLY OBVIOUS TO YOU OBVIOUS TO DO A
10 LITTLE DEMARCATION AS TO WHAT TYPE OF ANSWER YOU ARE
11 SOLICITING, WHETHER ITS IN HER EXPERT OPINION OR WHETHER
12 ITS SOMETHING A PARTICULAR -- SOME PARTICULAR EXPERIENCE
13 THAT ACTUALLY HAPPENED. ALL RIGHT?

14 MS. MEW: I UNDERSTAND.

15 THE COURT: THANK YOU.

16 BY MS. MEW:

17 Q. DOES NBME PROVIDE ANY INFORMATION TO EXAMINEES
18 WHO WANT TO SEEK ACCOMMODATIONS ON THE USMLE?

19 A. YES. ON THE USMLE WEBSITE THERE IS A TEST
20 ACCOMMODATIONS PAGE THAT IS AVAILABLE FOR EXAMINEES TO
21 REVIEW. ON THE TEST ACCOMMODATIONS PAGE, THERE IS AN
22 OVERVIEW AND INTRODUCTION, WHICH PROVIDES EXAMINEES WITH
23 BASIC INFORMATION ABOUT ACCOMMODATIONS, INCLUDING THE
24 PURPOSE.

25 IT ALSO STATES THAT ITS ESSENTIAL FOR

1 EXAMINEES' SUPPORTING DOCUMENTATION TO DESCRIBE THEIR
2 FUNCTIONAL IMPAIRMENT AND TO PROVIDE A CLEAR RATIONALE
3 FOR THE ACCOMMODATIONS THEY ARE REQUESTING.

4 IN ADDITION TO THE OVERVIEW AND
5 INTRODUCTION, WE ALSO HAVE GENERAL GUIDELINES THAT
6 PROVIDE INFORMATION ABOUT THE TYPE OF -- THE TYPES OF
7 DOCUMENTATION THAT WE ASK EXAMINEES TO SUBMIT WITH THEIR
8 REQUEST FOR ACCOMMODATIONS.

9 SO THAT INCLUDES THE PERSONAL STATEMENT,
10 IT ALSO INCLUDES AN EVALUATION OR RECORDS FROM A
11 TREATMENT PROFESSIONAL, AS WELL AS OBJECTIVE RECORDS.
12 AND IN ADDITION TO THOSE GENERAL GUIDELINES WE ALSO HAVE
13 SPECIFIC GUIDELINES OR FOR SOME SPECIFIC IMPAIRMENTS,
14 INCLUDING ATTENTION DEFICIT-HYPERACTIVITY DISORDER,
15 WHERE AGAIN, THERE IS JUST MORE DETAILED AND SPECIFIC
16 INFORMATION ABOUT THE DOCUMENTATION THAT EXAMINEES
17 SHOULD PROVIDE TO SUPPORT THEIR REQUEST FOR
18 ACCOMMODATIONS.

19 Q. AND FROM YOUR PERSPECTIVE, WHAT IS THE PURPOSE
20 OF THE TESTING ACCOMMODATION GUIDELINES?

21 A. THE GUIDELINES ARE MEANT TO BE CLEAR AND
22 TRANSPARENT AND TO PROVIDE EXAMINEES WITH INFORMATION
23 AHEAD OF TIME SO THAT THEY CAN PREPARE IN ADVANCE AND
24 KNOW WHAT DOCUMENTATION IS EXPECTED IN ORDER TO SUPPORT
25 THEIR REQUEST FOR ACCOMMODATIONS.

1 Q. IF AN EXAMINEE DOES NOT FOLLOW THE GUIDELINES,
2 WILL YOU STILL REVIEW ANY DOCUMENTATION THEY PROVIDE?

3 A. YES. BECAUSE WE TRY NOT TO BE OVERLY
4 BURDENSOME.

5 Q. WHAT IS YOUR GENERAL APPROACH TO REVIEWING
6 ACCOMMODATION REQUESTS?

7 A. WHEN I AM REVIEWING AN ACCOMMODATION REQUEST,
8 FIRST, I REVIEW THE INFORMATION THAT THE EXAMINEE STATED
9 ON THE REQUEST FORM. SO SPECIFICALLY, THE REPORTED
10 DIAGNOSES, THE ACCOMMODATION THAT THEY ARE REQUESTING,
11 THEIR EDUCATIONAL HISTORY AND WHETHER ACCOMMODATIONS
12 WERE PROVIDED.

13 BUT -- AND THEN ADDITIONALLY, I REVIEW
14 THEIR PERSONAL STATEMENT TO HEAR IN THEIR OWN WORDS
15 ABOUT THEIR REPORTED DISABILITY AND HOW IT IS IMPAIRING
16 TO THEM IN THEIR DAILY LIFE, BUT ON THE MORE GENERAL
17 LEVEL I AM LOOKING TO SEE IF THE DOCUMENTATION SUPPORTS
18 THE REPORTED DIAGNOSES, WHETHER THAT REPORTED DIAGNOSES
19 THAT -- THE REPORTED DIAGNOSES OR DIAGNOSES IS CAUSING
20 AN IMPAIRMENT IN A MAJOR LIFE ACTIVITY.

21 AND ALSO, WHETHER THERE IS A CLEAR
22 RATIONALE FOR THE REQUESTED ACCOMMODATION AND IF THE
23 ACCOMMODATION IS APPROPRIATE AND REASONABLE.

24 Q. I BELIEVE YOU ALLUDED TO THIS BEFORE IN TALKING
25 ABOUT THE KINDS OF REQUESTS THAT COME IN, BUT WHAT KIND

1 OF BASIS DO EXAMINEES REQUEST TESTING ACCOMMODATIONS ON,
2 WHAT COULD BE THE BASIS FOR THE REQUEST?

3 A. EXAMINEE'S REQUEST ON THE BASIS OF
4 NEURODEVELOPMENTAL DISABILITIES, SUCH AS ADHD AND
5 SPECIFIC LEARNING DISABILITY. ALSO THEY REQUEST
6 ACCOMMODATIONS ON THE BASIS OF PSYCHIATRIC IMPAIRMENT,
7 SUCH AS ANXIETY OR BIPOLAR DISORDER, AND ALSO PHYSICAL
8 IMPAIRMENTS AS WELL.

9 Q. WHEN YOU REVIEW AN ACCOMMODATION REQUEST ARE YOU
10 ONLY LOOKING TO SEE IF SOMEONE HAS A DIAGNOSIS?

11 A. NO.

12 Q. WHY NOT?

13 A. BECAUSE A DIAGNOSIS ALONE IS NOT SUFFICIENT TO
14 DEMONSTRATE AN IMPAIRMENT. I AM LOOKING TO DETERMINE
15 WHETHER THE DOCUMENTATION PROVIDED DEMONSTRATES A
16 CURRENT FUNCTIONAL IMPAIRMENT IN A MAJOR LIFE ACTIVITY
17 THAT IS RELEVANT TO TAKING THE USMLE.

18 Q. I AM GOING TO PULL UP PX EXHIBIT 2?

19 DR. KITCHENS: OBJECTION, YOUR HONOR. IS
20 DR. MCGEEHAN READING FROM A DOCUMENT OF HER TESTIMONY?

21 MS. MEW: ARE YOU, DR. MCGEEHAN?

22 THE COURT: WELL -- SORRY, MS. MEW ASKED
23 THE WITNESS A QUESTION. I DIDN'T HEAR A RESPONSE.

24 BY MS. MEW:

25 Q. WE SHOULD HAVE NO NOTES OR ANYTHING, SORRY?

1 A. I DON'T HAVE ANY NOTES OR ANYTHING.

2 Q. OKAY. SORRY.

3 A. NO.

4 Q. SORRY. SO YEAH. NO NOTES?

5 A. I HAVE NOTHING. I CAN SEND YOU A PICTURE OF MY
6 OFFICE.

7 Q. OKAY. ALL RIGHT. PX 2.

8 DO YOU RECOGNIZE THIS COLLECTION OF
9 DOCUMENTS?

10 A. YES, I DO.

11 Q. AND SO WHAT IS THIS -- WELL, LET ME -- I'M
12 SORRY, I WILL TELL YOU ITS ALREADY BEEN PUT ON THE
13 RECORD, BUT WE WILL CLICK THROUGH. THIS IS DR.
14 KITCHENS' FIRST REQUEST FOR TESTING ACCOMMODATIONS.

15 YOU CAN LET ME KNOW IF YOU RECOGNIZE
16 THESE DOCUMENTS?

17 A. YES, THIS IS THE DOCUMENTATION THAT DR. KITCHENS
18 PROVIDED WITH HIS INITIAL REQUEST FOR TEST
19 ACCOMMODATIONS IN JANUARY OF 2022.

20 Q. AND LET'S GO BACK TO THE FIRST PAGE.

21 SO WHAT IS THIS FIRST PAGE?

22 A. THE FIRST PAGE IS THE USMLE REQUEST FOR TEST
23 ACCOMMODATIONS FORM, WHICH WE REQUIRE EVERY EXAMINEE TO
24 SUBMIT AS THEIR OFFICIAL NOTIFICATION TO REQUEST TEST
25 ACCOMMODATIONS.

1 Q. AND AS YOU ARE LOOKING AT THE PAGE GENERALLY,
2 WHAT KIND OF INFORMATION IS CONVEYED ON THIS FIRST PAGE?

3 A. WE PROVIDE SOME GENERAL INFORMATION ABOUT THE
4 TEST ACCOMMODATIONS PROCESS AND THE TIMELINE WHERE
5 EXAMINEES SHOULD -- HOW EXAMINEES SHOULD SUBMIT THEIR
6 DOCUMENTATION TO US.

7 WE REFER EXAMINEES BACK TO THE GUIDELINES
8 ON THE WEBSITE AND THEN WE ALSO EXPLAIN TO EXAMINEES
9 MORE CLEARLY IN THAT BOTTOM SECTION, THE DOCUMENTATION
10 THAT THEY MUST PROVIDE TO US WITH THEIR REQUEST, WHICH
11 INCLUDES A PERSONAL STATEMENT, RECORDS OR AN EVALUATION
12 FROM A TREATING PROFESSIONAL, AND THEN ALSO ADDITIONAL
13 SUPPORTING DOCUMENTATION.

14 Q. LET'S TURN TO PAGE 3.

15 WHAT ACCOMMODATIONS DID DR. KITCHENS
16 REQUEST?

17 A. DR. KITCHENS CROSSED OUT ADDITIONAL BREAK TIME
18 AND REQUESTED 100 PERCENT ADDITIONAL TEST TIME OVER TWO
19 DAYS FOR STEP 1.

20 Q. LOOKING AT PAGE 4 OF THE FORM -- AND ACTUALLY,
21 STRIKE THAT, I WANT TO JUST ALSO ESTABLISH FOR THE
22 RECORD I THINK I HAVE ASSUMED THIS ALL ALONG.

23 DR. MCGEEHAN, ARE YOU THE INDIVIDUAL WHO
24 REVIEWED DR. KITCHENS' REQUEST FOR ACCOMMODATIONS ON
25 BEHALF OF NBME?

1 A. YES, I DID.

2 Q. OKAY. THANK YOU.

3 SO IF WE LOOK HERE AT PAGE 4, WHAT
4 INFORMATION ARE YOU SEEKING UP HERE IN SECTION D 1, OF
5 THE FORM?

6 A. THE REPORTED DISABILITY THAT THE EXAMINEE IS
7 MAKING THEIR REQUEST FOR ACCOMMODATION IS BASED OFF. SO
8 DR. KITCHENS INDICATED HE WAS REQUESTING ACCOMMODATIONS
9 ON THE BASIS OF ATTENTION DEFICIT-HYPERACTIVITY
10 DISORDER, DIAGNOSED IN 2013, AND TEST ANXIETY, DIAGNOSED
11 IN 2018.

12 Q. AND HOW DO YOU USE THIS PARTICULAR INFORMATION
13 ON THE FORM?

14 A. LOOKING AT THE INDIVIDUAL'S SUPPORTING
15 DOCUMENTATION, I AM LOOKING TO DETERMINE WHETHER THERE
16 IS SUPPORTING DOCUMENTATION -- WHETHER IT SUPPORTS THESE
17 REPORTED DIAGNOSES AND WHETHER THIS REPORTED DIAGNOSES
18 -- AGAIN, WHETHER THE DOCUMENTATION DEMONSTRATES THAT
19 THE REPORTED DIAGNOSES ARE IMPAIRING TO THE INDIVIDUAL.

20 Q. UP HERE IT STATES "TEST ANXIETY" UNDER
21 DISABILITY.

22 IS TEST ANXIETY A RECOGNIZED MENTAL
23 DISORDER?

24 A. NO, IT IS NOT RECOGNIZED IN THE DIAGNOSTIC AND
25 STATISTICAL MANUAL OF MENTAL DISORDERS, FIFTH EDITION

1 TEXT REVISION.

2 Q. STILL LOOKING HERE ON PAGE 4, I WANT TO LOOK
3 HERE IN THE MIDDLE OF THE PAGE, SECTION D 2, PERSONAL
4 STATEMENT.

5 WHAT KIND OF INFORMATION IS BEING
6 REQUESTED IN SECTION D-2?

7 A. WE TELL EXAMINEES THAT THE PERSONAL STATEMENT IS
8 REALLY THEIR OPPORTUNITY TO EXPLAIN HOW -- TO EXPLAIN TO
9 US WHAT THEIR SYMPTOMS ARE IN DETAIL.

10 SO GIVE A DESCRIPTION OF THEIR CURRENT
11 SYMPTOMS, EXPLAIN TO US HOW THOSE SYMPTOMS ARE IMPAIRING
12 THEM IN THEIR DAY-TO-DAY LIFE, IN MULTIPLE SETTINGS SO
13 NOT JUST IN AN ACADEMIC SETTING OR IN AN -- ON AN
14 STANDARDIZED TEST, BUT IN OTHER AREAS OF THEIR LIFE.

15 AND THEN WE ASK FOR THEM TO TELL US WHY
16 THEY ARE REQUESTING THE ACCOMMODATIONS THEY ARE, AND HOW
17 THOSE ACCOMMODATIONS WOULD AMELIORATE THEIR IMPAIRMENTS.

18 Q. AND WHY ARE YOU ASKING FOR THIS KIND OF
19 INFORMATION?

20 A. WE ASK FOR THIS INFORMATION TO HAVE A BETTER
21 UNDERSTANDING OF, AGAIN, HOW THE DIAGNOSES CAME TO BE IN
22 THE INDIVIDUAL'S LIFE AND REALLY IT'S AN OPPORTUNITY FOR
23 THE INDIVIDUAL TO TELL US, IN THEIR OWN WORDS, THEIR
24 STORY.

25 Q. IF WE CAN TURN TO THE PAGE THAT HAS DR.

1 KITCHENS' PERSONAL STATEMENT.

2 DR. MCGEEHAN, DID DR. KITCHENS PROVIDE
3 THE KIND OF PERSONAL STATEMENT INFORMATION THAT YOU FIND
4 USEFUL IN REVIEWING AN ACCOMMODATION REQUEST?

5 A. UNFORTUNATELY, HE DID NOT. HE SIMPLY STATED HIS
6 REPORTED DIAGNOSES OF ADHD AND TEST ANXIETY. BUT HE DID
7 NOT GO INTO DETAIL ABOUT HOW THOSE DIAGNOSES CAME TO BE.

8 HE DIDN'T DESCRIBE IN ANY DETAIL ANY OF
9 HIS SYMPTOMS, NOR DID HE EXPLAIN HOW THOSE SYMPTOMS ARE
10 IMPAIRING TO HIM. AND HE ALSO DID NOT PROVIDE A CLEAR
11 RATIONALE FOR WHY 100 PERCENT ADDITIONAL TEST TIME WOULD
12 BE NECESSARY TO ACCESS A HIGH STAKES LICENSING EXAM.

13 Q. AND DR. MCGEEHAN, IS IT A FUNCTION OF LENGTH,
14 ARE YOU LOOKING FOR A LONGER STATEMENT?

15 A. NO. IT'S MORE QUALITY OVER QUANTITY. I FEEL
16 LIKE THAT INFORMATION COULD HAVE BEEN PROVIDED IN TWO
17 PARAGRAPHS.

18 Q. AND THEN IF WE TURN BACK TO PAGE 4, OF THE FORM.
19 AND IF WE LOOK DOWN TO SECTION E, "ACCOMMODATION
20 HISTORY."

21 WHAT KIND OF INFORMATION IS NBME SEEKING
22 IN THIS SECTION?

23 A. WE DO CONSIDER IT RELEVANT AS TO WHETHER AN
24 INDIVIDUAL WAS PREVIOUSLY PROVIDED ACCOMMODATIONS ON
25 PRIOR TO STANDARDIZED EXAMS DUE TO REPORTED DISABILITY

1 OR IN THEIR EDUCATIONAL HISTORY.

2 AND SO WE ASK INDIVIDUALS TO INFORM US
3 WHETHER THEY WERE PREVIOUSLY FORMALLY ACCOMMODATED.
4 AGAIN, IN ANY PRIOR STANDARDIZED EXAMS OR IN THEIR
5 EDUCATIONAL HISTORY.

6 Q. WHY IS -- AND WHAT DID DR. KITCHENS REPORT IN
7 HIS ACCOMMODATION FORM, AND WE CAN LOOK AT PAGE 4 AND
8 PAGE 5.

9 A. THAT HE WAS NOT ACCOMMODATED ON THE ON THE SAT
10 OR THE ACT. NO ACCOMMODATIONS WERE PROVIDED ON THE MCAT
11 AND HE NOTED THAT HE WAS NOT DIAGNOSED IN ELEMENTARY,
12 MIDDLE, OR HIGH SCHOOL, AND NO ACCOMMODATIONS WERE
13 LISTED FOR UNDERGRADUATE OR MEDICAL SCHOOL.

14 Q. DID DR. KITCHENS PROVIDE ANY MEDICAL RECORDS AS
15 PART OF HIS REQUEST?

16 A. YES, HE DID.

17 Q. WHEN YOU ARE REVIEWING MEDICAL RECORDS WHAT ARE
18 YOU LOOKING FOR IN THOSE RECORDS?

19 A. GENERALLY, I AM LOOKING FOR AGAIN, WHETHER OR
20 NOT THE DOCUMENTATION SUPPORTS THE REPORTED DIAGNOSES.

21 SO I AM LOOKING FOR WHETHER THE TREATING
22 PROFESSIONAL CLEARLY DELINEATES HOW THE DIAGNOSTIC
23 CRITERIA WERE MET FOR THE DIAGNOSES. I AM LOOKING FOR A
24 DISCUSSION OF HOW THE REPORTED DIAGNOSES ARE CAUSING AN
25 IMPAIRMENT IN THE INDIVIDUAL'S DAY-TO-DAY LIFE, IN

1 MULTIPLE SETTINGS, ACADEMIC, OCCUPATIONAL, SOCIAL.

2 AND FOR A CLEAR RATIONALE FOR ANY
3 ACCOMMODATIONS THAT ARE RECOMMENDED AND WHY THOSE
4 ACCOMMODATIONS ARE NECESSARY FOR ACCESS TO THE USMLE.

5 Q. AND WE ARE GOING TO DISCUSS THE INDIVIDUAL
6 RECORDS, WE WILL GO THROUGH THEM BUT BROADLY SPEAKING IN
7 YOUR REVIEW, DID YOU FIND THAT THE MEDICAL RECORDS
8 SUBMITTED BY DR. KITCHENS SUPPORTED HIS REQUEST FOR
9 100 PERCENT EXTRA TESTING TIME ON THE STEP 1
10 EXAMINATION?

11 A. NO. I THOUGH THAT THE MEDICAL RECORDS THAT WERE
12 SUBMITTED BY DR. KITCHENS WERE AMBIGUOUS AND THAT THEY
13 DID NOT SUPPORT HIS REQUEST FOR 100 PERCENT ADDITIONAL
14 TEST TIME.

15 Q. IF WE LOOK TO THE APRIL 22, 2020, LETTER FROM
16 GORY KHAN -- SORRY, I DON'T HAVE A PAGE. OKAY.

17 DID YOU REVIEW THIS LETTER AS PART OF
18 YOUR REVIEW OF THE FILE, DR. MCGEEHAN?

19 A. YES, I DID.

20 Q. IN YOUR REVIEW DID YOU FIND THAT THIS LETTER
21 SUPPORTED DR. KITCHENS' REQUEST FOR TESTING
22 ACCOMMODATIONS?

23 A. NO.

24 Q. WHY NOT?

25 A. THIS LETTER BY DOCTOR KHAN IS EXTREMELY VAGUE.

1 IT DOES NOT PROVIDE A DIAGNOSTIC CODE FROM THE DSM-5 TR.
2 IT STATES THAT DR. KITCHENS HAS SIGNIFICANT ANXIETY AND
3 IS UNDER TREATMENT.

4 THERE IS NO RELEVANT CLINICAL INFORMATION
5 PROVIDED IN REGARD TO SYMPTOMS, HOW DIAGNOSTIC CRITERIA
6 ARE MET, THERE IS NO DISCUSSION OF FUNCTIONAL
7 IMPAIRMENT, AND THERE IS NOT A CLEAR RECOMMENDATION FOR
8 ACCOMMODATION ON TESTING.

9 DOCTOR KHAN SIMPLY STATES TO ALLOW SOME
10 RELAXATION IN THE RULES AND I AM UNCLEAR AS TO WHAT THAT
11 MEANS.

12 Q. AND IF YOU LOOK --

13 A. I JUST WANTED TO ALSO NOTE THAT THIS LETTER
14 APRIL 22ND, 2020, WAS SUBMITTED WITH HIS 2022 REQUEST
15 AND SYMPTOMS OF MOOD CAN VARY CONSIDERABLY OVER TIME AND
16 WITH TREATMENT AND WE DO ASK EXAMINEES TO PROVIDE
17 DOCUMENTATION THAT'S RECENT, WITHIN THE LAST SIX MONTHS,
18 FROM A MENTAL HEALTH TREATMENT PROFESSIONAL.

19 Q. AND IF WE CLICKED THE NEXT PAGE, FOR THE RECORD
20 IS THE OCTOBER 5TH, 2020, OFFICE VISIT RECORD FROM NORTH
21 WESTERN DERMATOLOGY, PAGE 9.

22 IN YOUR REVIEW DID THIS REPORT SUPPORT
23 DR. KITCHENS' REQUEST FOR TESTING ACCOMMODATIONS?

24 A. NO, IT DID NOT.

25 Q. AND WHY NOT?

1 A. AGAIN, THIS RECORD CONTAINS LITTLE -- NO
2 RELEVANT CLINICAL INFORMATION, WHATSOEVER. IT STATES
3 THAT PAST MEDICAL HISTORY DIAGNOSIS OF ADHD BUT THERE IS
4 NO INFORMATION AS TO HOW OR WHO MADE THAT DIAGNOSIS, HOW
5 THAT DIAGNOSIS CAME TO BE, THE CRITERIA THAT WERE USED
6 TO MAKE THAT DIAGNOSIS.

7 THERE IS NO DISCUSSION OF ANY FUNCTIONAL
8 IMPAIRMENT, AND THERE IS NO RECOMMENDATION FOR
9 ACCOMMODATIONS THAT HAS BEEN PROVIDED.

10 Q. AND IF WE LOOK TO THE BOTTOM OF THE PAGE.

11 A. MM-HMM.

12 Q. WHAT DOES THE REFERENCE TO PRESCRIPTION
13 MEDICATION AT THE BOTTOM OF THE PAGE TELL YOU AS PART OF
14 YOUR ANALYSIS?

15 A. IT DOES NOT TELL ME MUCH, OTHER THAN THOSE WERE
16 MEDICATION -- CURRENT OUT-PATIENT MEDICATIONS THAT HAD
17 BEEN PRESCRIBED, BUT IT TELLS ME NOTHING ABOUT THE
18 DIAGNOSIS OR IMPAIRMENT OR ITS RELEVANCY TO TAKING A
19 STANDARDIZED EXAMINATION.

20 Q. THEN IF WE CLICK TO THE NEXT TWO PAGES.

21 THESE -- AND JUST FOR THE RECORD, THESE
22 ARE THE TWO PAGES THAT HAVE THE DATE MAY 25TH, 2018, IN
23 THE FOOTER.

24 IN YOUR REVIEW, DID THESE TWO PAGES
25 SUPPORT DR. KITCHENS' REQUEST FOR TESTING

1 ACCOMMODATIONS?

2 A. THEY DID NOT.

3 Q. WHY NOT?

4 A. THIS APPEARS TO BE AN EXCERPT, I GUESS, FROM A
5 COMPLETE RECORD THAT WASN'T PROVIDED TO US FOR REVIEW,
6 AGAIN, IN ADDITION WHILE IT LISTS INFORMATION IN THE
7 ASSESSMENT/PLAN SESSION, THERE IS NO RELEVANT CLINICAL
8 INFORMATION PROVIDED AS TO HOW A DIAGNOSIS CAME TO BE,
9 THE CRITERIA THAT WERE USED TO MAKE THE DIAGNOSES.

10 THERE IS NO DISCUSSION OF FUNCTIONAL
11 IMPAIRMENT IN DAY-TO-DAY LIFE, AND THERE IS NO NOT A
12 RECOMMENDATION FOR ACCOMMODATIONS FOR TESTING. AND
13 THERE IS ACTUALLY A REFERRAL MADE TO BE -- A REFERRAL
14 MADE TO A MENTAL HEALTH COUNSELOR TO BE EVALUATED AND
15 TREATED.

16 Q. IF WE CLICK TO THE NEXT TWO PAGES, WHICH IS THE
17 JULY 26, 2017, OFFICE VISIT.

18 IN YOUR REVIEW DID THAT RECORD SUPPORT
19 DR. KITCHENS' REQUEST FOR TESTING ACCOMMODATIONS?

20 A. NO, THEY DID NOT.

21 Q. AND WHY IS THAT?

22 A. AGAIN, THERE WAS LITTLE TO NO CLINICAL
23 INFORMATION PROVIDED HERE BY DR. HACKMAN. DR. HACKMAN
24 ACTUALLY REFERS DR. KITCHENS OUT TO BE EVALUATED FOR
25 ADHD IN THIS PROGRESS NOTE. SO I AM UNCLEAR AS TO

1 WHETHER DR. HACKMAN IS EVEN MAKING A DIAGNOSIS.

2 THERE IS NO INFORMATION PROVIDED AT ALL

3 ABOUT DR. KITCHENS, ABOUT ANY SYMPTOMS HE WAS

4 EXPERIENCING AT THE TIME. THERE IS NO INFORMATION

5 PROVIDED AS TO HOW HE WAS EXPERIENCING ANY IMPAIRMENT

6 BECAUSE OF THOSE SYMPTOMS, AND THERE IS NO

7 RECOMMENDATION THAT IS MADE FOR TEST ACCOMMODATIONS.

8 Q. AND THEN IF YOU CLICK TO THE NEXT TWO PAGES.

9 AND WHAT DOES THIS DOCUMENT APPEAR TO BE?

10 A. IT APPEARS TO BE AN E-MAIL FROM PROMETRIC, TO

11 DR. KITCHENS, REGARDING AN APPOINTMENT CONFIRMATION FOR

12 THE NBME SUBJECT EXAMINATION PROGRAM, THE COMPUTER-BASED

13 COMPREHENSIVE BASIC SCIENCE EXAM.

14 AND IT LISTS EXTENDED TIME UNDER TEST

15 ACCOMMODATIONS.

16 Q. WHAT IS THE CBSE?

17 A. ITS AN EXAMINATION THAT IS PROVIDED BY THE NBME

18 SUBJECT EXAMINATION PROGRAM.

19 Q. AND I THINK WE HAVE ESTABLISHED THIS BUT DOES

20 THE NBME DECIDE WHO RECEIVES ACCOMMODATION IS ON THE

21 CBSE?

22 A. NO, THEY DO NOT.

23 Q. AND SO HOW DID THIS DOCUMENT INFORM YOUR

24 ANALYSIS?

25 A. THERE IS NOT REALLY MUCH INFORMATION THAT I CAN

1 GAIN FROM THIS. ALTHOUGH IT LISTS EXTENDED TIME UNDER
2 TEST ACCOMMODATIONS, I'M UNCLEAR AS TO WHY DR. KITCHENS
3 WAS PROVIDED EXTENDED TIME FOR THIS ONE EXAMINATION.

4 WE DO ASK THAT IF EXAMINEES ARE BEING
5 PROVIDED ACCOMMODATIONS BY THEIR MEDICAL SCHOOL, THAT
6 THEY COMPLETE THE CERTIFICATION OF PRIOR TEST
7 ACCOMMODATIONS FORM. THAT FORM SHOULD BE COMPLETED BY A
8 MEDICAL SCHOOL OFFICIAL IN THE DISABILITY SERVICES UNIT
9 WHO CAN ACTUALLY SPEAK TO THE SPECIFIC ACCOMMODATIONS
10 THAT ARE PROVIDED ON COMPUTER-BASED EXAMINATIONS.

11 AND THEN WE ALSO ASK FOR THE INDIVIDUAL
12 TO PROVIDE A RATIONALE AS TO WHY THOSE ACCOMMODATIONS
13 ARE PROVIDED. SO I DON'T KNOW IF DR. KITCHENS WAS
14 PROVIDED ACCOMMODATIONS FOR A BROKEN WRIST OR SOMETHING
15 THAT HAPPENED RANDOMLY AT THE TIME AND THAT'S WHY NEEDED
16 ACCOMMODATIONS FOR THAT ONE EXAM, I AM UNCLEAR.

17 Q. LET'S TAKE THAT DOWN. AND THEN LET'S PULL UP
18 EXHIBIT PX 4.

19 CAN YOU TAKE A LOOK AT THAT DOCUMENT?

20 A. YES.

21 Q. OKAY. DO YOU RECOGNIZE THIS DOCUMENT?

22 A. YES, I DO.

23 Q. WHAT IS THIS?

24 A. THIS IS THE CORRESPONDENCE THAT I WROTE TO DR.
25 KITCHENS, EXPLAINING OUR RATIONALE AS TO WHY HIS REQUEST

1 FOR TEST ACCOMMODATIONS WAS DENIED.

2 Q. GENERALLY SPEAKING, WHY DID NBME DENY DR.
3 KITCHENS' REQUEST?

4 A. WE EXPLAINED THAT HIS DOCUMENTATION DID NOT
5 SUPPORT HIS REQUEST FOR TEST ACCOMMODATIONS BECAUSE THE
6 DOCUMENTATION DID NOT SUBSTANTIATE A DIAGNOSIS OF ADHD.

7 WE EXPLAINED THAT TEST ANXIETY IN AND OF
8 ITSELF WAS NOT EVIDENCE OF A DISABILITY OR IMPAIRMENT IN
9 A MAJOR LIFE ACTIVITY. AND WE EXPLAINED THAT DR.
10 KITCHENS WAS ABLE TO PROGRESS THROUGHOUT HIS EDUCATION
11 WITHOUT ANY ACCOMMODATIONS AND THAT DEMONSTRATED THAT HE
12 DID NOT REQUIRE ACCOMMODATIONS TO ACCESS THE USMLE.

13 Q. WE CAN TAKE THAT DOCUMENT DOWN.

14 AND WE WILL PULL UP EXHIBIT PX 3. IF YOU
15 CAN TAKE A LOOK AT THIS DOCUMENT.

16 DOES THIS IS DOCUMENT OR THIS COLLECTION
17 OF DOCUMENTS LOOK FAMILIAR TO YOU, DR. MCGEEHAN?

18 A. YES, THIS WAS DR. KITCHENS' SECOND REQUEST FOR
19 TEST ACCOMMODATIONS THAT HE SUBMITTED IN OCTOBER OF
20 2022.

21 Q. AND WE WILL FORWARD TO PAGE 3.

22 WHAT IS DR. KITCHENS' SEEKING IN THIS
23 REQUEST?

24 A. HE CHECKED OFF ADDITIONAL BREAK TIME AND
25 50 PERCENT ADDITIONAL TEST TIME.

1 Q. AND WE CAN TAKE THAT DOWN.

2 DID DR. KITCHENS PROVIDE ANY NEW
3 DOCUMENTATION WITH THIS REQUEST?

4 A. NO, HE DID NOT.

5 Q. DID YOU COMMUNICATE WITH DR. KITCHENS ABOUT THIS
6 REQUEST?

7 A. I DID.

8 Q. AND NOW WE WILL PULL UP EXHIBIT DX 78. TAKE A
9 LOOK AT THIS DOCUMENT.

10 DO YOU RECOGNIZE THIS DOCUMENT?

11 A. YES. I WROTE -- I WROTE THAT EMAIL TO DR.
12 KITCHENS.

13 Q. IN YOUR OWN WORDS, WHAT ARE YOU TRYING TO CONVEY
14 TO DR. KITCHENS IN THIS E-MAIL?

15 A. WELL, I WANT TO POINT OUT THAT THIS E-MAIL WAS
16 WRITTEN AFTER A DISABILITY SERVICES SPECIALIST HAD
17 ALREADY COMMUNICATED WITH DR. KITCHENS AND EXPLAINED
18 THAT NO ADDITIONAL OR NEW DOCUMENTATION WAS SUBMITTED
19 WITH HIS REQUEST.

20 AND I WAS JUST REITERATING THAT
21 INFORMATION TO HIM TO SAY, WE HAVE PREVIOUSLY REVIEWED
22 -- CAREFULLY AND THOROUGHLY REVIEWED ALL OF THE
23 DOCUMENTATION HE HAD PREVIOUSLY PROVIDED, SO I WAS
24 TRYING TO EXPLAIN TO HIM TO, PLEASE, GO BACK AND LOOK AT
25 OUR GUIDELINES.

1 WE WOULD BE HAPPY TO REVIEW SOMETHING NEW
2 OR SUBSTANTIVE THAT WE HAVE NOT ALREADY LOOKED AT, BUT
3 ALTERNATIVELY, WE COULD RELEASE THE HOLD ON THE
4 SCHEDULING PERMIT SO THAT HE CAN GO AHEAD AND SCHEDULE
5 AN EXAM, SINCE WE LIKE TO BE AWARE OF INDIVIDUAL'S TIME
6 LINES.

7 Q. DOES THE NBME HAVE ANY MINIMUM PAGE -- YOU CAN
8 TAKE THAT DOWN.

9 DOES THE NBME HAVE ANY MINIMUM PAGE
10 REQUIREMENTS FOR THE AMOUNT OF SUPPORTING DOCUMENTATION
11 THAT GOES INTO THE REQUEST?

12 A. NO.

13 Q. SO WHAT ARE YOU -- WHAT ARE YOU LOOKING FOR WHEN
14 YOU ARE SAYING YOU -- YOU ARE LOOKING FOR NEW
15 DOCUMENTATION?

16 A. LOOKING FOR DOCUMENTATION, AGAIN, THAT WE HAD
17 NOT PREVIOUSLY REVIEWED WITH HIS PRIOR REQUESTS. SO WE
18 PROVIDE A LOT OF EXAMPLES ON OUR WEBSITE, AND IT DOES
19 NOT NECESSARILY HAVE TO BE A COMPREHENSIVE OR EXTENSIVE
20 EVALUATION.

21 IT DOES NOT NECESSARILY EVEN HAVE TO BE
22 TREATMENT RECORDS. IT COULD BE ANY SORT OF OBJECTIVE
23 RECORDS THAT MIGHT DEMONSTRATE THE INDIVIDUAL'S REPORTED
24 IMPAIRMENT.

25 THAT COULD BE A PRIOR TRANSCRIPTS. IT

1 COULD BE LETTERS FROM -- LETTERS OR FEEDBACK FROM
2 FACULTY. LETTERS FROM A NEIGHBOR WHO IS SAYING THAT YOU
3 EXHIBIT OR YOU REPORTED SYMPTOMS.

4 IT COULD ALSO BE RECORDS THAT DEMONSTRATE
5 YOU HAVE NOT BEEN ABLE TO PAY -- YOU PASSED DUE ON YOUR
6 BILLS BECAUSE OF YOUR INATTENTION OR -- SO AGAIN, WE
7 HAVE A NUMBER OF EXAMPLES THAT WE PROVIDE ON OUR
8 WEBSITE.

9 IT DOES NOT NECESSARILY HAVE TO BE
10 SOMETHING THAT IS -- LIKE I SAID, IT DOES NOT
11 NECESSARILY HAVE TO BE A COMPREHENSIVE OR EXPENSIVE
12 EVALUATION.

13 MS. MEW: I DO NOT HAVE ANY OTHER
14 QUESTIONS FOR DR. MCGEEHAN.

15 THE COURT: OKAY. DR. KITCHENS?

16 CROSS EXAMINATION
17 BY DR. KITCHENS:

18 Q. HI THERE, DR. MCGEEHAN. NICE TO MEET YOU IN
19 PERSON -- WELL, OVER VIDEO.

20 A. I KNOW.

21 Q. SO CAN YOU REITERATE WHAT YOU STATED THAT YOU
22 HAD YOUR PH.D. IN?

23 A. YES. I HAVE A DOCTORAL DEGREE IN EDUCATIONAL
24 PSYCHOLOGY, WITH A FOCUS IN SCHOOL PSYCHOLOGY.

25 Q. OKAY. THANK YOU.

1 SO DID YOU EVER GO TO MEDICAL SCHOOL?

2 A. NO.

3 Q. OKAY. THANK YOU.

4 YOU MENTIONED EARLIER ABOUT THE DSM-5 TR
5 MANUAL THAT -- SO YOU -- ISN'T IT TRUE THAT YOU ARE
6 AWARE OF THE CHANGE OF THE DSM-5 TO THE DSM-5 TR?

7 A. I AM AWARE OF WHAT CHANGE? CAN YOU CLARIFY?

8 Q. YES. SO RECENTLY THERE WAS A CHANGE FROM THE --
9 YOU MENTIONED EARLIER THAT YOU REVIEWED THE DSM -- THE
10 DSM-5 TR EARLIER FOR ADHD, BUT IT RECENTLY CHANGED TO
11 THE DSM-5 TR. SO WERE YOU AWARE OF THE CHANGE FROM
12 DSM-5 TO DSM-5 TR?

13 A. YES. THAT THERE WAS A TEXT REVISION? YES.

14 Q. UH-HUH. AND WERE THERE ANY CHANGES BETWEEN THE
15 DSM-5 AND DSM-5 TR REGARDING ADHD?

16 A. AS FAR AS THE CRITERIA, THE CRITERIA STAYED THE
17 SAME. I CAN'T RECALL ANY SPECIFIC OR DRASTIC CHANGES
18 THAT WERE MADE TO THE CRITERIA.

19 Q. AND THANK YOU FOR THAT.

20 ISN'T IT TRUE THAT THE DSM-5 TR AND --
21 ACTUALLY, LET ME CHANGE THAT THERE.

22 IS IT IN YOUR -- WITHIN YOUR
23 UNDERSTANDING THAT ONE, AS AN ADULT, CAN BE DIAGNOSED
24 WITH ADHD?

25 A. YES.

1 Q. ISN'T IT TRUE THAT THE DSM-5 TR RECOGNIZES THAT
2 A SUBSTANTIAL PORTION OF CHILDREN WITH ADHD REMAIN
3 RELATIVE IMPAIRED UNTIL ADULthood?

4 A. YES.

5 Q. IF I COULD NOW GO AND IF WE CAN PULL UP PX 03.
6 AND I AM GOING TO PLUG UP MY COMPUTER. SORRY. SO WE
7 RECENTLY WENT OVER THIS, WE CAN SCROLL THROUGH QUICKLY
8 JUST FOR CLARITY'S SAKE.

9 DO YOU RECOGNIZE THIS -- THIS DOCUMENT,
10 DR. MCGEEHAN?

11 A. THE REQUEST FOR TEST ACCOMMODATIONS FORM?

12 Q. YES, OH, SORRY. PLEASE GO THROUGH SO SHE CAN
13 SEE THE DOCUMENT IN ITS ENTIRETY, PLEASE. OKAY.

14 SO NOW THAT -- SO YOU RECOGNIZE THIS
15 DOCUMENT; CORRECT?

16 A. YES.

17 Q. SO THIS IS MY -- IF WE GO DOWN TO THE DATE SO WE
18 CAN THE DATE THERE. ZOOM UP JUST A LITTLE BIT, PLEASE.

19 SO WHEN YOU REVIEWED MY DOCUMENT FOR --
20 REVIEWED THIS -- MY APPLICATION, FOR ACCOMMODATIONS,
21 WOULD YOU SAY THAT YOU SPENT AN ADEQUATE AMOUNT OF TIME
22 IN REVIEWING THE RECORDS ATTACHED?

23 A. YES.

24 Q. AND HOW MUCH TIME EXACTLY DID YOU SPEND
25 REVIEWING MY APPLICATION?

1 A. I MEAN, I CAN'T -- I CAN'T GIVE AN ESTIMATED
2 AMOUNT OF TIME BUT I PROVIDE A THOROUGH AND
3 INDIVIDUALIZED REVIEW FOR EVERY SINGLE REQUEST THAT
4 COMES ACROSS MY DESK.

5 Q. I CAN APPRECIATE YOU SAYING THAT YOU CAN'T GIVE
6 AN ACCURATE AMOUNT OF TIME BUT CAN YOU GIVE AN ESTIMATE
7 AMOUNT OF TIME THAT YOU SPENT REVIEWING MY
8 DOCUMENTATION, AN ESTIMATE; FIVE MINUTES, TEN MINUTES?

9 A. TO BE HONEST, I REVIEWED YOUR REQUEST -- YOU
10 KNOW, A FEW -- I REVIEWED YOUR REQUEST INITIALLY WHEN I
11 CAME IN -- YOU KNOW, TOPICALLY A THOROUGH INDIVIDUALIZED
12 REVIEW TAKES MORE THAN A FEW MINUTES. SO I WOULD SAY AT
13 LEAST TWO OR SO HOURS, MAYBE MORE.

14 Q. SO YOU ARE SAYING FOR THE RECORD THAT YOU SPENT
15 APPROXIMATELY TWO HOURS REVIEWING MY -- MY APPLICATIONS?

16 A. REVIEWING YOUR APPLICATION IN DETAIL, YES.
17 DRAFTING CORRESPONDENCE TO YOU, YES.

18 Q. SO -- OKAY. LET ME BE A LITTLE BIT MORE
19 SPECIFIC.

20 WHEN I SUBMITTED MY DOCUMENTATION TO YOU,
21 WHEN YOU REVIEWED -- NOT INCLUDING CORRESPONDENCE TO ME
22 -- WHEN YOU REVIEWED THIS DOCUMENT, WHEN I SENT IT IN
23 AND YOU LOOKED OVER AND REVIEWED IT, APPROXIMATELY HOW
24 MUCH TIME DID IT TAKE FOR YOU TO REVIEW THAT -- THOSE
25 MEDICAL DOCUMENTS INCLUDED WITH THIS PARTICULAR

1 APPLICATION?

2 A. AGAIN, AROUND ONE OR TWO HOURS.

3 Q. OKAY. TWO HOURS. TO REVIEW THIS, DID I HEAR
4 YOU -- FOR THE RECORD, DID I HEAR YOU SAY YOU SPENT TWO
5 HOURS REVIEWING THIS DOCUMENT THAT WE HAVE HERE ON THE
6 SCREEN? FOR THE RECORD?

7 A. WAIT, JUST FOR THE REQUEST FORM? I THINK I AM
8 CONFUSED AS TO WHAT YOU ARE ASKING ME?

9 CAN YOU CLARIFY WHAT YOU ARE ASKING ME,
10 BECAUSE I THINK I AM CONFUSED.

11 MS. MEW: AND DR. KITCHENS, I DON'T MEAN
12 TO INTERRUPT AND I'M SORRY TO DO THIS, FIRST AND JUST SO
13 THE RECORD IS CLEAR, YOU PULLED UP PX 3 AND I THINK THAT
14 -- ARE YOU TALKING ABOUT YOUR FIRST REQUEST OR YOUR
15 SECOND REQUEST?

16 DR. KITCHENS: I ASKED FOR PX 3.

17 MS. MEW: OKAY.

18 DR. KITCHENS: AND THAT'S -- I SHOWED THE
19 DATE THERE SO WE CAN SEE.

20 MS. MEW: OKAY.

21 BY DR. KITCHENS:

22 Q. AND SO WHEN REVIEWING THIS DOCUMENT, DR.
23 MCGEEHAN, ON THIS APPLICATION AND THE DOCUMENTS ATTACHED
24 TO IT, IT ESTIMATED -- HOW MUCH ESTIMATED TIME DID IT
25 TAKE FOR YOU TO REVIEW MY DOCUMENTATION FOR MY

1 APPLICATION?

2 A. SO I JUST WANT TO CLARIFY THAT YOU ARE ASKING
3 HOW MUCH TIME IT TOOK ME TO REVIEW YOUR SECOND REQUEST
4 FOR TEST ACCOMMODATIONS THAT CAME IN? AND NOT JUST
5 YOUR ASKING HOW MUCH TIME IT TOOK TO REVIEW ALL OF THAT
6 DOCUMENTATION FOR THE SECOND TIME?

7 Q. THIS DOCUMENT HERE, THAT'S ON THE SCREEN, THAT
8 WAS GIVEN ON AUGUST 30TH, 2020?

9 A. JUST REVIEWING THE REQUEST FORM?

10 Q. OKAY. IT INCLUDES ALL OF THE DOCUMENTATION IN
11 THIS. CAN WE SCROLL THROUGH FOR DR. MCGEEHAN'S
12 CONVENIENCE, PLEASE?

13 THAT'S THE ENTIRE DOCUMENT, DR. MCGEEHAN.

14 HOW LONG DID IT TAKE YOU FOR YOU TO
15 REVIEW THIS DOCUMENT, AN ESTIMATE?

16 A. TO REVIEW YOUR SECOND REQUEST FOR TEST
17 ACCOMMODATIONS IT PROBABLY TOOK ME AROUND 30 MINUTES BUT
18 THEN I WENT BACK TO COMPARE IT TO WHAT YOU HAD
19 PREVIOUSLY PROVIDED WITH YOUR INITIAL REQUEST FOR TEST
20 ACCOMMODATIONS.

21 Q. 30 MINUTES. OKAY. AND THEN FOR MY INITIAL
22 ACCOMMODATIONS, FOR WHICH WE HAVE -- I THINK FOR TIME'S
23 SAKE, THERE WAS NO NEW DOCUMENTATION. I THINK WE CAN
24 AGREE TO THAT DUE TO CORRESPONDENCE AND THINGS OF THAT
25 NATURE.

1 MY QUESTION WOULD BE NOW IS:

2 HOW MUCH TIME DO YOU ESTIMATE THAT YOU
3 SPENT REVIEWING MY ORIGINAL, MY FIRST -- SORRY,
4 APPLICATION FOR ACCOMMODATIONS?

5 A. OUR INITIAL APPLICATION FOR ACCOMMODATIONS?
6 AGAIN, PROBABLY AROUND ONE TO TWO HOURS.

7 Q. OKAY. AND DR. MCGEEHAN, HOW MANY APPLICATIONS
8 DO YOU REVIEW IN ANY GIVEN DAY?

9 A. I CAN'T REALLY QUANTIFY THAT. I AM NOT ONLY
10 REVIEWING TESTS FOR ACCOMMODATIONS IN MY DAY-TO-DAY
11 ROLE. I AM ALSO INVOLVED IN OTHER PROJECTS AND SO.

12 Q. MM-HMM?

13 A. I CAN'T SPEAK TO EXACTLY HOW MANY REQUESTS I
14 REVIEW IN ONE DAY. I WOULD NOT BE ABLE TO GIVE YOU AN
15 ACCURATE ESTIMATE OF THAT.

16 Q. AND I UNDERSTAND THAT YOU HAVE MANY OTHER ROLES
17 AS WELL BUT YOU KNOW, DO YOU KNOW NORMALLY REVIEW, ON
18 ANY GIVEN DAY ONE APPLICATION, TWO APPLICATIONS?

19 A. IT DEPENDS ON WHAT MY SCHEDULE LOOKS LIKE FOR
20 THE DAY.

21 Q. OKAY. THANK YOU.

22 I THINK EARLIER IT WAS SAID THAT THE NBME
23 RECEIVES SEVERAL THOUSAND APPLICATIONS A YEAR AND THAT
24 85 PERCENT OF THEM ARE APPROVED. SO I JUST WANT TO SEE
25 REALLY ABOUT, YOU KNOW, HERE IS -- ANYWAY, I DIGRESS. I

1 MOVE FORWARD.

2 SO ISN'T IT TRUE THAT ALL OF THE
3 APPLICATIONS THAT YOU -- THAT ARE -- THAT I HAVE
4 SUBMITTED TO YOU CONTAIN A PERSONAL STATEMENT?

5 A. YES.

6 Q. AND IF I COULD, LET'S SEE IF WE CAN PULL BACK UP
7 THAT PARTICULAR DOCUMENT, PLEASE? AND TO GO MY PERSONAL
8 STATEMENT THERE, THANK YOU.

9 DR. MCGEEHAN, ISN'T IT TRUE THAT THERE
10 HAVE BEEN DOCUMENTED APPLICANTS WHO HAVE PROVIDED A
11 PERSONAL STATEMENT THAT IS MUCH MORE DETAILED AND IN
12 LENGTH THAN MY PERSONAL STATEMENT HERE AND HAVE BEEN
13 DENIED ACCOMMODATIONS?

14 A. INDIVIDUALS' PERSONAL STATEMENTS VARY IN LENGTH
15 AND, AS I EXPLAINED TO MS. MEW, IT'S QUALITY OVER
16 QUANTITY. SO IT DOES NOT NECESSARILY MATTER IN REGARD
17 TO HOW MANY PAGES OR PARAGRAPHS AN INDIVIDUAL WRITES.

18 IT'S THE DEPTH AND BREADTH OF THE
19 INFORMATION THAT THE INDIVIDUAL PROVIDES TO US ABOUT
20 THEIR REPORTED DISABILITY AND HOW IT IS IMPAIRING TO
21 THEM IN THEIR DAILY LIFE.

22 Q. YES, DR. MCGEEHAN, I DON'T MEAN TO CUT YOU OFF,
23 JUST FOR TIME'S SAKE, I AM LOOKING AT THE TIME HERE.

24 IF YOU COULD GIVE A TRUE OR NOT TRUE,
25 JUST TIME SAKE ON THIS QUESTION IS REALLY A YES OR NO.

1 ISN'T IT TRUE THAT -- ISN'T IT TRUE THAT
2 PEOPLE WHO HAVE APPLIED FOR ACCOMMODATIONS HAVE PROVIDED
3 MORE SUBSTANTIAL DOCUMENTATION THAN MY APPLICATION AND
4 HAS BEEN DENIED ACCOMMODATIONS; TRUE -- ISN'T THAT TRUE?

5 A. I AM NOT SURE HOW OTHER INDIVIDUALS' REQUEST FOR
6 TEST ACCOMMODATIONS ARE RELEVANT TO YOURS, DR. KITCHENS.

7 Q. IT'S RELEVANT BECAUSE -- WELL

8 THE COURT: HOLD ON, DR. KITCHENS, HOLD
9 ON.

10 DR. MCGEEHAN, COULD YOU PLEASE ANSWER THE
11 QUESTION.

12 THE WITNESS: CAN YOU REPEAT IT BACK TO
13 ME, PLEASE?

14 DR. KITCHENS: YES, MA'AM, NO PROBLEM.

15 BY DR. KITCHENS:

16 Q. ISN'T IT TRUE THAT THERE ARE APPLICANTS WHO HAVE
17 APPLIED FOR ACCOMMODATIONS WITH MORE -- WITH MORE
18 DETAILED DOCUMENTATION THAN I HAVE PROVIDED HERE AND HAS
19 BEEN DENIED ACCOMMODATIONS?

20 A. I GUESS I AM UNCLEAR ABOUT WHAT YOU MEAN BY MORE
21 DETAILED.

22 Q. OKAY.

23 A. YES, IT'S POSSIBLE THAT AN INDIVIDUAL MIGHT HAVE
24 PROVIDED A LENGTHIER PERSONAL STATEMENT AND THEIR
25 REQUEST WAS DENIED. AGAIN, IF THE PERSONAL STATEMENT

1 WASN'T -- IT DIDN'T CONTAIN THE INFORMATION TO SUPPORT
2 THEIR REQUEST FOR ACCOMMODATIONS.

3 Q. OKAY. AND ISN'T IT TRUE THAT THERE HAVE BEEN
4 APPLICANTS THAT HAVE PROVIDED SEVERAL DIFFERENT DETAILED
5 EVALUATIONS FOR ADHD, BY SEVERAL DIFFERENT MEDICAL
6 PROVIDERS AND WERE DENIED THEIR DENIED ACCOMMODATIONS
7 FOR THE USMLE?

8 A. WE REVIEW THESE REQUESTS ON AN INDIVIDUALIZED
9 BASIS ITS DEPENDENT ON WHETHER THE DOCUMENTATION
10 SUPPORTS THE REQUESTED ACCOMMODATIONS.

11 Q. OKAY.

12 A. WE WOULD KEEP TRACK OF -- YOU KNOW, WE DON'T
13 NECESSARILY KEEP TRACK OF EXAMINEES THAT THE LENGTH OF
14 THE DOCUMENTATION AND WHETHER AN ACCOMMODATION WAS
15 APPROVED OR NOT.

16 Q. RIGHT. WELL, MY QUESTION HERE IS:
17 WERE THOSE PEOPLE WHO HAVE PROVIDED ALL
18 OF THESE DOCUMENTATIONS THAT YOU HAVE REQUESTED HAVE
19 ALSO BEEN DENIED, TO BE MORE SPECIFIC; ISN'T THAT
20 CORRECT?

21 A. BUT AGAIN, AS I MENTIONED DR. KITCHENS, ITS NOT
22 NECESSARILY THAT WE ARE ASKING FOR, YOU KNOW, A
23 COMPREHENSIVE EVALUATION OR THESE LENGTHY TREATMENT
24 RECORDS. IT'S JUST, WE ARE ASKING FOR DOCUMENTATION TO
25 SUBSTANTIATE THE DIAGNOSIS.

1 THE COURT: DR. MCGEEHAN, I THINK
2 SOMETHING IS OFF ON MY EAR, BUT THESE ARE SOUNDING LIKE
3 QUESTIONS WHERE THERE IS A PRETTY STRAIGHTFORWARD YES,
4 NO, OR I DON'T KNOW.

5 SO DR. KITCHENS, WHY DON'T YOU TRY THAT
6 AGAIN.

7 BY DR. KITCHENS:

8 Q. DR. MCGEEHAN, ISN'T IT TRUE THAT APPLICANTS
9 THERE HAS BEEN APPLICANTS WHO HAVE SUBMITTED ALL OF THE
10 -- THE THINGS THAT YOU GUYS HAVE -- THAT NBME REQUESTS
11 FROM THEIR GUIDELINES FOR ACCOMMODATIONS AND WERE
12 DENIED; CORRECT?

13 A. NO, IF IT DIDN'T SUPPORT THEIR REQUESTS.

14 Q. SO DID YOU SAY NO, THAT'S NOT CORRECT?

15 A. AN INDIVIDUAL PROVIDED DOCUMENTATION AND WE
16 PROVIDED -- THAT THEY PROVIDED DOCUMENTATION THAT WE
17 ASKED BUT IT DIDN'T SUPPORT THEIR REQUEST, THEN YES, IT
18 WAS DENIED.

19 Q. OKAY. LET'S GO AHEAD AND MOVE ON. CAN YOU
20 SCROLL DOWN, PLEASE, TOWARDS THE MEDICAL RECORD? SORRY,
21 SCROLL UP SOME FIRST.

22 DR. MCGEEHAN, HERE CAN YOU SEE ON THE
23 SCREEN HERE THERE IS A CONFIRMATION OF -- MY
24 CONFIRMATION FROM THE PROMETRIC CENTER.

25 DO YOU SEE THAT?

1 A. YES.

2 Q. DO YOU SEE WHERE IT SAYS "TESTING ACCOMMODATIONS
3 AND EXTENDED TIME"?

4 A. YES.

5 Q. ISN'T IT TRUE THAT IF THERE WAS AN OPTION
6 BETWEEN A CERTAIN PERCENTAGE OF EXTENDED TIME THAT IT
7 WOULD HAVE BEEN -- THAT IT WOULD HAVE BEEN INDICATED ON
8 THIS PARTICULAR DOCUMENT?

9 A. I DON'T KNOW. I DON'T KNOW THAT ANSWER.

10 Q. OKAY. LET ME ASK THAT QUESTION DIFFERENTLY.
11 ISN'T IT MOST LIKELY THAT IF MY SCHOOL
12 SAID THAT WE PROVIDE 25 PERCENT EXTRA MORE TIME, THAT IT
13 WOULD HAVE INDICATED HERE ON THIS DOCUMENT NEAR
14 "EXTENDED TIME"?

15 A. WHERE?

16 Q. DO YOU SEE WHERE IT SAYS "EXTENDED TIME" THERE?

17 A. YES.

18 Q. OKAY. LET'S MOVE ON. IF YOU CAN SCROLL DOWN,
19 PLEASE. ALL RIGHT. HERE. SCROLL DOWN A LITTLE MORE,
20 PLEASE.

21 DR. MCGEEHAN, DO YOU SEE WHERE IT
22 SAYS PAST "MEDICAL HISTORY"?

23 A. YES.

24 Q. AND CAN YOU SEE THE WORD THAT IS WRITTEN RIGHT
25 UP UNDER THERE?

1 A. YES.

2 Q. FOR THE RECORD CAN YOU SAY WHAT THIS WORD IS?

3 A. ADHD

4 Q. NO, THE WORD ABOVE ADHD?

5 A. DIAGNOSIS.

6 Q. AND THEN THE WORD UNDER DIAGNOSES, THAT FIRST
7 BULLET POINT, WHAT WAS THE DIAGNOSE?

8 A. ADHD.

9 Q. AND WHAT WAS THE DATE THAT I WAS DIAGNOSED WITH
10 ADHD, ACCORDING TO THIS MEDICAL RECORD?

11 A. ACCORDING TO THE MEDICAL RECORD, IT HAS LISTED
12 2013.

13 Q. OKAY. WOULD A PROFESSIONAL -- ISN'T IT TRUE
14 THAT IT WOULD BE UNLIKELY FOR A PROFESSIONAL MEDICAL
15 DOCTOR TO GIVE A DIAGNOSIS OF ADHD WITHOUT DOING THE
16 PROPER EXAMINATIONS?

17 A. I DON'T KNOW IF THAT'S TRUE OR NOT. I CAN'T
18 SPEAK TO THAT.

19 Q. OKAY. SO LET ME ASK THAT QUESTION A LITTLE BIT
20 DIFFERENT THEN.

21 WOULD IT BE PROFESSIONAL FOR A MEDICAL
22 DOCTOR TO GIVE A DIAGNOSES OF ADHD WITHOUT DOING THE
23 PROPER EVALUATIONS?

24 WOULD IT BE UNPROFESSIONAL FOR THEM TO
25 GIVE A DIAGNOSES OF ADHD WITHOUT DOING THE PROPER

1 EVALUATIONS TO JUSTIFY THEIR DIAGNOSES OF ADHD?

2 A. THERE ARE VARIOUS TREATING PROFESSIONALS WHO ARE
3 QUALIFIED TO DIAGNOSE ADHD, AND WHO EVALUATE AND
4 DIAGNOSE ADHD IN VARIOUS WAYS. SO I -- AGAIN, I CAN'T
5 SPEAK TO HOW A MEDICAL DOCTOR MIGHT DIAGNOSE ADHD. I AM
6 A PSYCHOLOGIST, AND I CAN EXPLAIN TYPICALLY
7 PSYCHOLOGISTS GO AHEAD DIAGNOSING ADHD.

8 Q. THE QUESTIONS WAS REALLY A YES OR NO.

9 WAS -- IS IT PROFESSIONAL FOR A MEDICAL
10 DOCTOR TO GIVE A DIAGNOSES OF ADHD WITHOUT DOING PROPER
11 EVALUATION -- WITHOUT CONDUCTING A PROPER EVALUATION TO
12 JUSTIFY THEIR DIAGNOSES; YES OR NO?

13 THE COURT: DR. KITCHENS, I UNDERSTOOD
14 THE ANSWER TO BE, I DON'T KNOW.

15 DR. KITCHENS: MOVING ON. OKAY. MOVING
16 ON, IF WE CAN SCROLL DOWN, PLEASE?

17 BY DR. KITCHENS:

18 Q. DO YOU SEE THE -- WHERE IT SAYS THE MEDICATION
19 -- MEDICATION LIST HERE?

20 A. YES.

21 Q. DR. MCGEEHAN?

22 AND CAN YOU SAY -- DO YOU SEE THIS WHERE
23 IT'S CIRCLED IN RED.

24 A. YES.

25 Q. AND AS A PSYCHOLOGIST, WHAT IS THAT PARTICULAR

1 MEDICATION USED FOR, BUSPIRONE?

2 A. APPARENTLY ANXIETY.

3 Q. APPARENTLY ANXIETY? OKAY. AND WHAT DID WE SEE
4 HERE CIRCLED IN THE RED? RIGHT BESIDE -- SORRY, YES,
5 WHERE THE CURSOR IS?

6 A. AND DEXTROAMPHETAMINE-AMPHETAMINE.

7 Q. AND THIS DRUG HERE IS WRITTEN SPECIFICALLY FOR
8 WHICH DIAGNOSES?

9 A. I'M ASSUMING ADHD.

10 Q. YES. AND DO YOU SEE RIGHT BESIDE IT -- AND WHAT
11 IS THE DOSAGE?

12 A. THAT'S OUTSIDE OF MY SCOPE. I CAN TELL WHAT YOU
13 IT SAYS RIGHT THERE, IT SAYS TAKE ONE TABLET BY MOUTH
14 DAILY.

15 Q. UH-HUH. AND DO YOU SEE THE AMOUNT HERE?

16 A. HERE?

17 Q. NO, GO BACK TO WHERE THE DEXTROAMPHETAMINE -- DO
18 YOU SEE THE MILLIGRAM RIGHT BESIDE IT?

19 A. 15 MILLIGRAMS.

20 Q. AND DO YOU SEE WHERE IT SAYS P-O-B-I-D.?

21 A. MM-HMM.

22 Q. CAN YOU TELL ME WHAT P-O-B-I-D STANDS FOR AND
23 WHAT IT MEANS?

24 A. NO, I CAN'T.

25 Q. THANK YOU. IF WE CAN -- AND DR. MCGEEHAN, ARE

1 YOU ABLE TO PRESCRIBE MEDICATION?

2 A. I AM NOT.

3 Q. AND DO YOU KNOW HOW THE MEDICATION FOR ADHD
4 WORKS?

5 A. THAT'S OUTSIDE OF MY SCOPE OF PRACTICE.

6 Q. OKAY. SO THAT'S OUTSIDE OF YOUR SCOPE OF
7 PRACTICE.

8 ISN'T IT TRUE THAT YOU ARE NOT QUALIFIED
9 TO REVIEW THESE MEDICAL RECORDS?

10 A. AGAIN, THE MEDICATIONS DON'T TELL ME ANYTHING
11 ABOUT THE DIAGNOSIS OR IMPAIRMENT AND AN INDIVIDUAL IS
12 STILL QUALIFIED TO -- AN INDIVIDUAL CAN STILL BE
13 QUALIFIED TO DIAGNOSE ADHD.

14 I WOULD ASSUME THAT MISTAKEN CAN'T
15 PRESCRIBE MEDICATION BUT SHE COMPLETED AN EVALUATION FOR
16 YOU --

17 Q. I'M SORRY, YOUR HONOR, I'M SORRY, DR. MCGEEHAN.

18 MY STATEMENT TO YOU WAS:

19 ISN'T IT TRUE THAT YOU ARE NOT QUALIFIED
20 TO REVIEW THESE MEDICAL RECORDS?

21 A. -- I AM NOT QUALIFIED TO REVIEW THESE MEDICAL
22 RECORDS.

23 Q. AND --

24 MS. MEW: I JUST COULDN'T -- I THINK THAT
25 THE SOUND FLIPPED OUT. I WANT TO MAKE SURE THE RECORD

1 IS CLEAR.

2 DR. KITCHENS: SORRY YES, MY QUESTION TO
3 DR. MCGEEHAN WAS: ISN'T IT TRUE THAT SHE IS NOT
4 QUALIFIED TO REVIEW THE THESE MEDICAL RECORDS.

5 BY DR. KITCHENS:

6 Q. AND CAN YOU SAY YOUR ANSWER AGAIN, PLEASE, DR.
7 MCGEEHAN.

8 A. YES. I SAID I AM QUALIFIED TO REVIEW THESE
9 MEDICAL RECORDS AND I REVIEW THESE -- I REVIEW MEDICAL
10 RECORDS AS PART OF MY DAY-TO-DAY RESPONSIBILITY.

11 Q. I'M SORRY, DR. MCGEEHAN. THAT'S THAT WASN'T
12 YOUR ANSWER. YOUR ANSWER WAS NO, I WAS NOT QUALIFIED.

13 A. NO, THAT'S NOT WHAT I SAID.

14 Q. OKAY. THE RECORD WILL -- OKAY.

15 A. I WANT TO CLARIFY THAT, THAT'S NOT WHAT I SAID.

16 Q. ALL RIGHT.

17 IF WE CAN, DR. MCGEEHAN, HERE ON THIS
18 PARTICULAR MEDICAL RECORD HERE, HOW MUCH MEDICATION DID
19 MY DOCTOR PRESCRIBE FOR ME TO TAKE IN A DAY OR
20 DEXTROAMPHETAMINE-AMPHETAMINE?

21 A. IN A DAY?

22 Q. YES, MA'AM, ONE TABLET, DAILY?

23 Q. ISN'T IT TRUE THAT P-O-B-I-D ACTUALLY MEANS TO
24 TAKE ONE TABLET ORAL -- TAKE THE TABLET ORALLY TWICE A
25 DAY?

1 A. AGAIN, I THINK I STATED EARLIER THAT I DIDN'T
2 KNOW WHAT THAT MEANT.

3 Q. SO ISN'T IT TRUE THAT IF THIS IS SAYING THAT --
4 THIS SAYS TO TAKE ONE TABLET BY MOUTH -- SORRY -- TAKE
5 ONE TABLET BY MOUTH, TWICE A DAY, ISN'T IT TRUE THAT
6 THAT WOULD INDICATE THAT THAT MY MEDICATION IS
7 30 MILLIGRAMS PER DAY THAT I WOULD HAVE TO TAKE?

8 A. I GUESS.

9 Q. OKAY. AND ISN'T IT TRUE THAT A PERSON WHO IS
10 TAKING A MEDICATION SUCH AS ADDERALL FOR ADHD,
11 30 MILLIGRAMS A DAY, IS CONSIDERED TO BE MODERATE TO
12 SEVERE SYMPTOMS FOR -- OF ADHD; ISN'T THAT TRUE?

13 A. I DON'T KNOW.

14 Q. AND ISN'T IT TRUE THAT THE MAXIMUM AMOUNT OF
15 DOSAGE THAT YOU CAN GIVE A PERSON WITH ADHD IS
16 40 MILLIGRAMS PER DAY?

17 A. I DON'T KNOW THE MAXIMUM DOSAGE.

18 Q. THANK YOU. ALL RIGHT. WE CAN REMOVE THAT
19 THERE. IF YOU COULD PX AND LET'S SEE. SORRY ABOUT
20 THAT. SORRY ABOUT THE DELAY. I AM ALMOST FINISHED
21 HERE, OKAY.

22 DR. MCGEEHAN, ISN'T IT TRUE THAT YOU HAVE
23 NOT CONDUCTED AN EVALUATION ON ME FOR ADHD?

24 A. I HAVE NOT.

25 Q. AND BUT BASED ON YOUR ONE TO TWO-HOUR LONG

1 REVIEW, AS YOU STATED EARLIER, WOULD YOU HAVE THIS COURT
2 TO BELIEVE THAT YOU KNOW BETTER THAN MY MEDICAL
3 PHYSICIANS WHO HAVE TREATED ME?

4 A. I CAREFULLY CONSIDER THE INFORMATION THAT IS
5 PROVIDED BY YOUR QUALIFIED TREATING PROFESSIONALS.

6 Q. THAT'S NOT MY QUESTION DR. MCGEEHAN. AND I'M
7 SORRY, YOUR HONOR, I DON'T MEAN TO CUT OFF.

8 I WILL REPEAT THE QUESTION FOR YOU, DR.
9 MCGEEHAN.

10 BASED ON THE ONE TO TWO-HOUR LONG REVIEW
11 OF MY APPLICATION, AS YOU MENTIONED EARLIER, WOULD YOU
12 HAVE THIS COURT TO BELIEVE THAT YOU WOULD KNOW BETTER
13 THAN THE MEDICAL PHYSICIANS WHO HAVE TREATED ME; YES OR
14 NO?

15 A.

16 MS. MEW: WAIT A MINUTE. I'M SORRY, WHAT
17 IS THE QUESTION?

18 DR. KITCHENS: THE QUESTION IS: WOULD --
19 DOES -- DOES DR. MCGEEHAN BELIEVE THAT SHE WOULD KNOW
20 MORE ABOUT ME THAN MY TREATING PHYSICIAN?

21 THAT'S A FAIR QUESTION IN MY OPINION.

22 THE WITNESS: WOULD I KNOW MORE ABOUT YOU
23 THEN YOUR TREATING PHYSICIAN? I DON'T KNOW HOW MUCH
24 YOUR TREATING PHYSICIAN KNOWS ABOUT YOU. I DON'T KNOW,
25 AND AGAIN, BASED ON THE RECORDS THAT WERE PROVIDED, THEY

1 DIDN'T REALLY SPEAK TO -- THEY DIDN'T PROVIDE ANY
2 INFORMATION ABOUT YOU.

3 BY DR. KITCHENS:

4 Q. SO ISN'T IT TRUE THAT MY MEDICAL PROVIDER SPENT
5 MORE TIME WITH ME THAN YOU HAVE?

6 A. I DON'T KNOW HOW MUCH TIME YOU SPENT WITH YOUR
7 MEDICAL PROVIDERS, DR. KITCHENS.

8 Q. HOW MUCH TIME, DR. MCGEEHAN, HAVE YOU SPENT IN
9 THE PRESENCE -- TALKING TO ME OUTSIDE THIS LITIGATION?

10 A. NONE.

11 Q. SO IS -- ISN'T IT TRUE THAT IF I HAVE MET WITH
12 MY PHYSICIANS IN PERSON WHO HAS MADE THESE DOCUMENTATION
13 ISN'T IT -- WOULDN'T IT BE -- ISN'T IT TRUE THAT I HAVE
14 MET WITH THEM MORE THAN I HAVE WITH YOU?

15 A. YES, BUT YOUR TREATMENT RECORDS DID NOT EVEN
16 STATE HOW MANY TIMES YOU MET WITH THEM.

17 Q. SO RIGHT. BUT THAT MY QUESTION WAS, YES, THANK
18 YOU.

19 CAN WE PULL UP -- JUDGE, I AM REALIZING
20 THE TIME. SHOULD I PAUSE AND PICK IT UP TOMORROW?

21 THE COURT: NO. LET'S GO TO ABOUT --
22 LET'S GO ABOUT TEN MORE MINUTES.

23 DR. KITCHENS: YES, SIR. THANK YOU, YES
24 JUDGE.

25 BY DR. KITCHENS:

1 Q. CAN WE PLEASE PULL UP -- YES, CAN WE PLEASE PULL
2 UP PX 30.

3 DR. MCGEEHAN, ARE YOU FAMILIAR WITH THIS
4 DOCUMENT THAT YOU SEE HERE ON THE SCREEN?

5 A. YES, ALTHOUGH IT WAS NOT PROVIDED WITH YOUR
6 INITIAL OR SECOND REQUEST FOR TEST ACCOMMODATIONS.

7 Q. YES. DR. MCGEEHAN, ARE YOU FAMILIAR WITH THE
8 DOCUMENT THAT'S ON THE SCREEN?

9 A. YES.

10 Q. AND DR. MCGEEHAN -- IF WE SCROLL DOWN SOME
11 PLEASE UNTIL WE GET TO THE DIAGNOSTIC PAGE -- SORRY,
12 STOP HERE FIRST.

13 DR. MCGEEHAN, DO YOU SEE WHERE IT SAYS
14 "ASSESSMENT PROCEDURES"?

15 A. YES.

16 Q. FOR THE COURT RECORD, CAN YOU PLEASE QUICKLY
17 READ THAT OUT LOUD?

18 A. "MEDICAL INTERVIEW RECORD REVIEW, BEHAVIORAL
19 OBSERVATIONS, A-DIVA 2, ACHENBACH SYSTEM OF EMPIRICALLY
20 -BASED ASSESSMENT SELF-REPORT, ACHENBACH SYSTEM OF
21 EMPIRICALLY-BASED ASSESSMENTS SPOUSE'S REPORT, ACHENBACH
22 SYSTEM OF EMPIRICALLY-BASED ASSESSMENT MOTHER'S REPORT,
23 MOXO DISTRACTED CONTINUOUS PERFORMANCE TEST.

24 Q. SO ISN'T IT TRUE THAT WHEN CONDUCTING THIS --
25 THIS EVALUATION, THESE ARE THE PROCEDURES THAT WERE

1 TAKEN INTO ACCOUNT?

2 A. YES, THAT'S -- THESE WERE THE -- THESE WERE THE
3 ASSESSMENTS WERE THAT ADMINISTERED TO YOU BY MRS. BACON.

4 Q. CAN WE SCROLL DOWN TO WHERE WE SEE THE
5 DIAGNOSTIC PAGE, PLEASE. YES.

6 SO DO YOU SEE WHERE IT SAYS "DIAGNOSTIC
7 IMPRESSIONS," DR. MCGEEHAN?

8 A. YES, I DO.

9 Q. SO ISN'T IT TRUE THAT THE EVALUATION ON THE
10 SCREEN CONTAINS A DIAGNOSTIC IMPRESSION?

11 A. YES.

12 Q. AND WHAT IS THAT DIAGNOSTIC IMPRESSION?

13 A. "ATTENTION DEFICIT-HYPERACTIVITY DISORDER,
14 COMBINED PRESENTATION."

15 Q. THANK YOU.

16 AND LET'S SCROLL DOWN. THANK YOU.

17 DR. MCGEEHAN, ISN'T IT TRUE THAT AS A
18 DISABILITY SPECIALIST PART OF YOUR FINAL DECISION IS TO
19 DETERMINE WHAT ACCOMMODATIONS ARE APPROPRIATE FOR AN
20 EXAMINATION?

21 A. YES.

22 Q. ISN'T IT TRUE THAT ADDITIONAL TIME IS AN
23 ACCOMMODATION LISTED ON THE USMLE? AND FOR THE RECORD,
24 THIS IS PX -- SORRY, YOU CAN TAKE -- YES -- NO, KEEP
25 THIS UP HERE.

1 YES WE ARE STILL ON PX 30 HERE, THANK
2 YOU.

3 SO YES SO I WILL STATE MY QUESTION AGAIN,
4 DR. MCGEEHAN; OKAY?

5 ISN'T IT TRUE THAT ADDITIONAL TIME
6 TESTING TIME IS AN ACCOMMODATION LISTED ON THE USMLE'S
7 APPLICATION FORM?

8 A. YES, ADDITIONAL TEST TIME IS LISTED ON THE USMLE
9 REQUEST FORM.

10 Q. 25 PERCENT ADDITIONAL TEST TIME OVER TWO DAYS IS
11 A REASONABLE ACCOMMODATION; CORRECT?

12 MS. MEW: OBJECTION. I MEAN, IN WHAT
13 CONTEXT IN YOUR CASE?

14 DR. KITCHENS: ACCORDING TO ON THE FORM
15 THAT IS THERE, THAT A PERSON IS ABLE TO CHECK OFF THAT
16 IT'S LISTED AS AN OPTION.

17 BY DR. KITCHENS:

18 Q. ISN'T IT TRUE THAT 25 PERCENT ADDITIONAL TEST
19 TIME OVER TWO DAYS IS A REASONABLE ACCOMMODATION;
20 CORRECT?

21 A. IT'S AN ACCOMMODATION THAT IS AVAILABLE TO
22 EXAMINEES, YES, 25 PERCENT ADDITIONAL TEST TIME IS
23 LISTED ON THE TEST FORM.

24 Q. AND 50 PERCENT OF ADDITIONAL TEST TIME OVER TWO
25 DAYS IS ALSO A REASONABLE ACCOMMODATION; CORRECT?

1 MS. MEW: JUST OBJECTION TO THE EXTENT
2 THAT'S VAGUE. WHAT ARE YOU TALKING ABOUT? IN WHAT
3 CONTEXT? IS IT FOR YOUR IN YOUR CASE OR JUST?
4 BY DR. KITCHENS:

5 Q. FOR AN APPLICANT WHO IS APPLYING FOR
6 ACCOMMODATIONS WHICH IS LISTED ON THE FORM FOR ASKING
7 FOR ACCOMMODATIONS, BECAUSE THAT PERSON CHECKS IT OFF
8 BEFORE THEY SUBMIT IT TO YOU, ISN'T IT TRUE THAT
9 100 PERCENT OF ADDITIONAL OVER TWO DAYS IS A REASONABLE
10 ACCOMMODATION; CORRECT?

11 MS. MEW: I OBJECT TO FORM.

12 THE COURT: YES, DR. KITCHENS, THE
13 STRUGGLE HERE IS AND THINK ABOUT PERSPECTIVE OF READING
14 THE TRANSCRIPT LATER, THERE IS GOING TO BE SOME
15 UNCLARITY ABOUT WHETHER WE ARE TALKING ABOUT THE
16 HYPOTHETICAL QUESTION, ABOUT WHETHER THAT ACCOMMODATION
17 COULD BE REASONABLE FOR THE RIGHT APPLICANT, OR WHETHER
18 DR. MCGEEHAN THOUGHT IT WAS REASONABLY FOR YOU.

19 DR. KITCHENS: THANK YOU, JUDGE. AND I
20 WILL REPHRASE MY QUESTION, IF THAT'S OKAY.

21 BY DR. KITCHENS:

22 Q. FOR THE RIGHT APPLICANT WHO IS REQUESTING
23 ACCOMMODATIONS ON THE USMLE, 100 PERCENT OF ADDITIONAL
24 TIME OVER TWO DAYS IS A REASONABLE ACCOMMODATION;
25 CORRECT?

1 MS. MEW: I AM GOING TO JUST OBJECT
2 AGAIN. I DON'T MEAN BUT --

3 THE COURT: OVERRULED. GO AHEAD AND
4 ANSWER, DR. MCGEEHAN.

5 THE WITNESS: FOR THE -- YES, EXAMINEES
6 CAN REQUEST 100 PERCENT ADDITIONAL TEST TIME FOR USMLE.
7 BY DR. KITCHENS:

8 Q. AND FOR THE RIGHT APPLICANT APPLYING FOR
9 ACCOMMODATIONS ISN'T IT TRUE THAT IT IS -- ISN'T IT TRUE
10 THAT ADDITIONAL BREAK TIME IS ALSO AN -- A REASONABLE
11 ACCOMMODATIONS; IS THAT CORRECT?

12 A. YES, WE ALSO HAVE ADDITIONAL BREAK TIME FORMS
13 AND SO EXAMINEES CAN REQUEST ADDITIONAL BREAK TIME AS
14 WELL.

15 DR. KITCHENS: THANK YOU, YOUR HONOR. I
16 HAVE NO FURTHER QUESTIONS.

17 THE COURT: ALL RIGHT. MS. MEW, GO
18 AHEAD, WE CAN SQUEEZE -- DEPENDING ON WHAT YOU HAVE IN
19 MIND WE SHOULD BE ABLE TO SQUEEZE IN YOUR REDIRECT.

20 MS. MEW: I THINK SO. CAN WE TAKE THIS
21 DOCUMENT DOWN? THANK YOU.

22 REDIRECT EXAMINATION

23 BY MS. MEW:

24 Q. DR. MCGEEHAN, IS THIS -- IS THIS YOUR FIRST TIME
25 TESTIFYING?

1 A. YES. SORRY, I WAS REALLY NERVOUS, JUDGE, SO I
2 APOLOGIZE IF -- I HAVE BEEN REALLY NERVOUS.

3 Q. IT HAS BEEN A LONG WAIT. YOU HAVE BEEN ON CALL
4 SINCE MONDAY?

5 A. YES, SO I APOLOGIZE FOR ASKING YOU TO CLARIFY.

6 THE WITNESS: DR. KITCHENS, I APPRECIATE
7 IT AND LIKE I SAID, I HAVE BEEN REALLY NERVOUS.

8 DR. KITCHENS: THAT'S FINE.

9 THE WITNESS: IT'S UNFORTUNATE THAT THIS
10 IS HOW WE ARE MEETING, SO...

11 BY MS. MEW:

12 Q. JUST FOR CLARITY, ONE THING.

13 WHEN DR. KITCHENS WAS ASKING YOU ABOUT
14 THE AMOUNT OF TIME THAT YOU WERE -- YOU SPENT REVIEWING
15 HIS FIRST REQUEST, AND YOU WERE ALSO TALKING ABOUT
16 PREPARING THE LETTER, JUST IN THE INTEREST OF TIME
17 BECAUSE YOU HAVE EXPLAINED THIS TO ME BEFORE I AM GOING
18 TO ASK YOU THIS AND YOU CAN JUST TELL ME IF I HAVE IT
19 RIGHT.

20 IS IT YOUR PRACTICE TO -- YOU SORT OF
21 REVIEW THE DOCUMENTS AND PREPARE THE LETTER WHILE YOU
22 ARE PREPARING THE DOCUMENTS?

23 A. SO INITIALLY I DO A FULL REVIEW OF THE DOCUMENTS
24 AND THEN AFTER THAT I MIGHT GO ON -- WE REVIEW REQUESTS
25 IN THE ORDER IN WHICH THEY ARE RECEIVED.

1 SO AT THAT POINT IN TIME, DEPENDING ON
2 WHEN THE EXAMINEES' REQUEST CAME IN, IT KIND OF GOES
3 INTO A LIST AND THEN I AM ALLOWED -- I APPRECIATE BEING
4 ABLE TO AND I GIVE MYSELF TIME THEN TO BE ABLE TO GO
5 BACK TO IT WHEN I AM READY TO THEN DRAFT THE LETTER FOR
6 IT. SO THEN I ESSENTIALLY LOOK AT IT AGAIN, WITH LIKE A
7 FRESH SET OF EYES.

8 Q. SO YOU ARE LOOKING THROUGH THE DOCUMENTS TWO
9 TIMES AT LEAST?

10 A. YES, AT LEAST TWO TIMES, YES.

11 Q. OKAY. AND ALSO JUST FOR CLARITY, WHEN DR.
12 KITCHENS WAS ASKING YOU HOW MANY APPLICATIONS YOU REVIEW
13 PER DAY, AND AGAIN JUST IN THE INTEREST OF TIME, ARE YOU
14 TRYING TO SAY THAT YOU DON'T NECESSARILY SPEND A FULL
15 DAY REVIEWING APPLICATIONS; SOME DAYS YOU MIGHT DO IT
16 SOME PART OF THE DAY, OTHER TIMES YOU MIGHT BE DOING
17 OTHER ACTIVITIES?

18 A. YES, EXACTLY. SO I MIGHT SPEND TIME IN THE
19 MORNING REVIEWING, AND AGAIN, IT JUST DEPENDS ON WHAT MY
20 DAY LOOKS LIKE.

21 Q. OR YOU MIGHT SPEND PART OF THE DAY TESTIFYING AT
22 TRIAL FOR THE FIRST TIME?

23 A. YES.

24 Q. OKAY. AND JUST SOMETHING ELSE I WANTED TO
25 CLARIFY.

1 AND AGAIN, DID YOU -- WAS DR. KITCHENS'
2 REQUEST FOR ACCOMMODATIONS WHEN HE SUBMITTED THAT FIRST
3 REQUEST FOR ACCOMMODATIONS THAT'S YOU REVIEWED ON THE
4 MERITS, WAS IT DENIED BECAUSE HE DID NOT COMPLY WITH THE
5 GUIDELINES?

6 A. NO.

7 Q. AND I THINK YOU SAID THIS BUT AGAIN, REGARDLESS
8 OF SOMEONE -- WHATEVER IT MIGHT BE, COMPLYING WITH THE
9 GUIDELINES, IS IT -- DO YOU REVIEW WHAT YOU RECEIVE ON
10 THE MERITS?

11 A. YES, AGAIN BECAUSE WE TRY NOT TO BE OVERLY
12 BURDENSOME TO EXAMINEES.

13 MS. MEW: NO FURTHER QUESTIONS. THANK
14 YOU, DR. MCGEEHAN.

15 THE WITNESS: THANK YOU.

16 MS. MEW: THE JUDGE MIGHT HAVE QUESTIONS.

17 THE COURT: DR. KITCHENS, ANY VERY
18 LIMITED RECROSS JUST ON THOSE EXACT TOPICS?

19 DR. KITCHENS: YES, SIR.

20 RECROSS EXAMINATION

21 BY DR. KITCHENS:

22 Q. DR. MCGEEHAN, THROUGHOUT THIS ENTIRE LITIGATION
23 I HAVE BEEN REMINDED HOW SPARSE MY APPLICATION IS.

24 ISN'T IT -- IS IT A TRUE STATEMENT THAT
25 YOU REVIEWED MY APPLICATION TWO TIMES BEFORE YOU MADE A

1 DECISION UPON MY APPLICATION?

2 A. YES.

3 Q. AND DR. MCGEEHAN, HOW MANY PEOPLE ARE IN YOUR
4 DEPARTMENT WHO REVIEW THESE -- WHO REVIEWS APPLICATIONS
5 FOR ACCOMMODATIONS?

6 A. CURRENTLY?

7 THE COURT: DR. KITCHENS, I'M GOING TO --
8 I WILL GIVE YOU A LITTLE BIT OF LEEWAY HERE BUT YOU NEED
9 TO KEEP THE SCOPE OF YOUR RE-CROSS LIKE NARROWED TO WHAT
10 MS. MEW WAS JUST ASKING. SORRY, GO AHEAD.

11 DR. KITCHENS: I AM, JUDGE.

12 BY DR. KITCHENS:

13 Q. GO AHEAD. MY QUESTION IS:

14 HOW MANY PEOPLE IN YOUR DEPARTMENT
15 REVIEWS APPLICATIONS?

16 A. CURRENTLY THERE ARE FOUR INDIVIDUALS WHO ARE --
17 REVIEW REQUEST FOR TEST ACCOMMODATIONS.

18 Q. AND MY LAST QUESTION IS:

19 AND HOW MANY APPLICANTS PER YEAR DO YOU
20 GUYS -- DOES THE NBME RECEIVE?

21 A. PER YEAR?

22 Q. YES, IN ONE YEAR?

23 A. I BELIEVE LAST YEAR WE RECEIVED OVER 2,500
24 REQUESTS.

25 Q. OKAY. SO IS IT ACCURATE THAT OUT OF 2,500, IT'S

1 DIVIDED BY FOUR PEOPLE TO REVIEW THOSE DOCUMENTS?

2 A. NO, BECAUSE SOME OF THOSE REQUESTS ARE REQUESTS
3 THAT WERE PREVIOUSLY APPROVED. SOME OF THOSE REQUESTS
4 ARE JUST FOR ADDITIONAL BREAK TIME ONLY.

5 SO THAT'S -- THE TOTAL NUMBER OF REQUESTS
6 WE RECEIVED ARE 2,500, BUT NOT ALL OF THOSE REQUESTS ARE
7 COMPREHENSIVELY AND THOROUGHLY REVIEWED.

8 DR. KITCHENS: NO FURTHER QUESTIONS, YOUR
9 HONOR.

10 THE COURT: OKAY. DR. MCGEEHAN, THANK
11 YOU FOR YOUR TIME. YOU MAY BE EXCUSED.

12 THE WITNESS: THANK YOU.

13 THE COURT: ALL RIGHT. WELL, THAT BRINGS
14 US TO THE END OF THE TRIAL DAY.

15 LIKE I SAID BEFORE, I AM SET UP SO THAT
16 WE CAN RESUME TOMORROW MORNING AT 9 A.M.

17 WE WILL ONLY GO FOR A LITTLE UNDER AN
18 HOUR BECAUSE I HAVE TO BREAK FOR A QUICK CONFERENCE IN
19 ANOTHER CASE, BUT THEN WE WILL -- AT THAT BREAK WE WILL
20 PROBABLY BE 20 MINUTES OR SOMETHING, I WILL TELL YOU AT
21 THE TIME AND WE WILL RESUME AND HOPEFULLY GET THIS THING
22 FINISHED TOMORROW.

23 DR. KITCHENS: YES, JUDGE.

24 MS. MEW: THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU. HAVE

1 A GOOD EVENING AND SEE IN YOU THE MORNING.

2 (COURT ADJOURNED.)

3 I CERTIFY THAT THE FOREGOING IS A CORRECT
4 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
5 ABOVE-ENTITLED MATTER.

6 **6-7-23**

Lynn Gligor

7 DATE OFFICIAL COURT REPORTER

8 LYNN GLIGOR, RMR

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